



WWOANW

PO Box 2404
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USA

www.wwoanw.org

Via email: orca.plan@noaa.gov

June 20, 2007

Assistant Regional Administrator
Protected Resources Division
Northwest Regional Office
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115

Re: Federal Register Docket No. 070125020-7020-01; I.D. 010907A
Protective Regulations for Killer Whales in the Northwest Region under the
Endangered Species Act and Marine Mammal Protection Act

Dear Sirs:

Thank you for the opportunity for input on the Proposed Rulemaking. The information and comments you seek are imbedded herein and specifically at the end.

The Whale Watch Operators Association Northwest is committed to the conservation of the Southern Resident Killer Whales ("SRKW's") and their main prey species, the salmon. It is clear that the regulatory efforts directed at the long-term recovery and stability of salmon populations and their habitats in the Pacific Northwest will significantly contribute to the conservation of the SRKW's. This will mean significant reductions to or elimination of salmon quotas within all sectors. Studies have shown the high correlation between salmon stocks and the SRKW population. Salmon habitats, including shore areas that may affect any salmon runs, need regulatory critical habitat designation and protection.

Furthermore, regulations need to be directed at reducing the toxic loading of our coastal ecosystems. Removal of toxic products needs to be a two-fold effort aimed at reducing both the toxic levels input into the local environment, as well as removal of those already in the system.

It is known that PBDE (polybrominated diphenyl ethers) are harmful to the environment, and they should be banned. These and other such toxic chemicals have no place in our world; they are dangerous to whales, humans and potentially all other life on earth.

Perhaps a good use of public funds is public education programs aimed at reducing the individual toxic footprint of Pacific Northwest residents. It is imperative everyone become educated on the products they use in their homes and cars, and the potential effects to their families and the environment – whales included.



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In order to monitor changes in the population, we need dedicated funds for the Center for Whale Research to continue their photo-identification, population demographics and winter distribution research. Funds also need to be dedicated for groups like the Orca Network who are already engaging the public in non-invasive tracking of killer whales while educating participants. These data, though not systematically collected, still assist in understanding the habitat use and movements of particular pods of whales. This will certainly contribute to any critical or important habitat designations.

The majority of the demise of the SRKW population occurs while they are not in the Georgia and Puget Sound Basins. It is therefore imperative to understand the habitats used by SRKW's during the winter months, to fully grasp the threats to their survival they face while not near these inland waters. It seems reasonable to think that the effective designation of critical habitat requires knowing the relative use/importance of different areas used throughout the year, in order to be biologically and ecologically complete.

Additionally, any exclusions or limitations that result in regard to human activity within critical habitat must apply to all sectors including the Navy and the Coast Guard. The recent incident of the USCG machine gunning within short distance of J-Pod is more than disheartening and begs many questions about existing regulations. Regulatory clarification is required in this area.

Members of the Whale Watch Operators Association Northwest would be pleased to be a part of the educational and public outreach required to initiate these processes as we have the unique opportunity to act as floating educational facilities wherein the audience is largely already environmentally minded.

In regard to measures aimed at vessel traffic, we are firm supporters of the Be Whale Wise initiative, as it was developed. We believe that the efforts required to educate recreational boaters needs to be enhanced. Continued monitoring of vessel numbers and behavior in proximity to killer whales is a vital component to understanding the whales' local environment.

The Whale Watch Operators Association Northwest would like to see continued support of the scientific research that has been initiated to understand the seasonal acoustic changes in the ocean. This includes answering questions regarding engine noise levels as related to distance to whales, weather conditions, behavior of the vessel, type of vessel etc in the areas where whale watching occurs. A complete study should include all vessel traffic types in the area, not just whale watching boats.



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Further to the noise issue, there should be no testing of naval sonar in killer whale habitat or in areas when salmon are migrating. The effect of this type of pollution to southern resident killer whales was noted in Haro Strait, with the USS Shoup. Further evidence of the disruptive and potentially damaging effects of this human activity are not required. Although we welcome nuclear aircraft carriers, it is interesting to note that the SRKW's leave the inside waters and head off shore every time one arrives.

Education of sport fish operators is also crucial as this is the sector of the maritime community most likely to directly overlap in distribution with foraging resident killer whales. In many cases, it has been observed that the whales travel through groups of vessels actively engaged in fishing activities. Dire consequences may result if depredation occurred that included ingestion of the hook. These vessels also produce noise and have propellers just like any other, and the 100-yard minimum distance should apply across all sectors equally.

The Whale Watch Operators Association Northwest has developed a protocol to address commercial operators whose actions do not reflect the spirit of Be Whale Wise or our own dynamic operating guidelines. Our goal is to further improve communication between members and monitoring groups, and set the precedent for standards of ethical whale watching. The monitoring and education outreach groups are crucial for whale conservation with our environment in its current state. Please ensure dedicated funding is available to allow these activities to continue.

In the face of global warming, large scale models need to be developed that takes into account the possible effects to local salmon populations with increased ocean temperatures. A forecast of the potential future quality of current habitats needs to be assessed. In addition, this may provide insight into habitats that may become important in the future, and if so, it seems like a positive strategy to initiate conservation measures in those regions now.

Further to our disciplinary review committee protocol, which was implemented in the spring of 2007, the WWOANW is seeking more formal communication links with NMFS and NOAA (and DFO) to report critical infractions by our members. Based on third party data, such letters will formally request modification of operating behaviors and their effectiveness is partially dependant on NMFS and NOAA interaction. The construction process of such protocol has already begun with NGO's, including Sound Watch and Strait Watch.

Additionally, it should be noted that our industry will not survive if vessels are 200 or more yards from the whales. The very important education element of our tours would be significantly compromised at those distances to the point where they would be



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ineffectual due to frustration, as the length of a football field already strains many passengers' patience. Enforcement of the existing 100 yard rule is the most productive step to create a safe buffer, and the new Protocol will assist greatly in this regard.

The specific Comments you seek follow, with the above reasoning and elaboration:

1. We advise that there is a need for regulation, utilizing existing guidelines and providing the enforcement to level the playing field for ALL vessels, commercial, private, research and governmental including military and para-military, USN and USCG; deep sea traffic and cruise ships. If the rules are not equally applicable to all then they should not exist, which we do not condone.
2. The regulations need to protect the SRKW's where ever they are and whenever they are there, not just in the few summer months that they travel local waters; Find out where they are for the other 7 months of the year and protect them there;
3.
 - a. Management options must include additional enforcement. They should also include our new Self Policing Model (the Industry Executive Review Committee-IERC) which will help fill some enforcement gaps, and fill them now;
 - b. Some operators and many passengers comment that they would prefer to see the minimum approach distance reduced to 50 yards, however, we are not advocating that at this time.
 - c. Use the Be Whale Wise Guidelines AS THEY CURRENTLY EXIST with a minimum approach distance of 100 yards, making regulatory allowances for situations in which the SRKW's approach vessels as well as other situations where approach within the 100 yards is not reasonably avoidable;
 - d. Enforce the Be Whale Wise guidelines and establish a baseline of behavior for ALL vessels of ALL types; none should be exempted from the law; charge or fine operators who do not abide; do not encumber the industry due a lack of enforcement effort; make that effort and ensure a level playing field
 - e. Prohibit running a vessel through a group of SRKW's at any speed, reduce speed to 7 knots (or the SRKW's speed if faster) when in the vicinity of whales (within 400 yards), prohibit separation of calves from mother or attending female,
 - f. Prohibit salmon fishing, commercial or recreational, until such time as stocks recover and SRKW's are delisted as endangered species;
 - g. Prohibit aircraft over whales under 2000 feet and within 2 lateral miles.
 - h. Time and area closures can not go beyond those voluntarily abided by, namely 0.5 Nautical Miles off Lime Kiln Lighthouse for 1.0 shore miles



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northwest and southeast, when SRKW's are present within; and ¼ mile offshore between Eagle Point and Mitchell Point;

- i. Prohibit swimming with, touching and feeding SRKW's;
- j. We have not seen signs of the SRKW's allowing themselves to be unwillingly herded or surrounded where they can not escape. They always have the third dimension, depth, which many shore based observers tend to overlook, perhaps because they view from solid ground where no such dimension exists for most animals. In years past when it was standard practice to conduct the Stop and Wait Sequence, whales consistently swam between the boats without incident; We must remember that these animals spend the large majority of their time underwater and not at the surface;

4.

- a. Compared with any other type of vessel (pleasure, tug, navy, coast guard, cruise ship, deep sea freighters), the commercial whale watching vessel has less impact on the SRKW's than any other, witness the hundreds of thousands of trips undertaken and the almost perfect record; Combine this with the ecologically friendly engine and drive installations which our industry is pioneering and you have an ever decreasing impact, due to the highly competitive nature of this particular free enterprise system. This highly competitive nature of this industry has pushed it to what some refer to as a tipping point, putting it at risk;
- b. Permit Certification, if any, should be issued by and managed by the international industry association, WWOANW, which has proven itself to be world leader in matters effecting marine mammal viewing and organization. A joint international commission will be too cumbersome, not reactive nor proactive, as the industry is able to be, under the guidance of NMFS. Any permits should allow the holders to go beyond what non-permit holders are able to do. We are not convinced Permitting is necessary at this time, given the pressures the industry is already under and the reductions we are facing.

5.

- a. Regulatory steps taken beyond these suggested herein will significantly and negatively impact the industry, reduce jobs, and negatively impact the regional tourism industry including hotels, ferries, airlines, buses, restaurants. People travel from all over the world to visit the Pacific Northwest and view the icon of this pristine area, the Killer Whale. Additional pressures at this time while we are at a tipping point will result in negative economic impacts to an industry which has taken millions of people to see whales in their wild habitat, and thereby raised the SRKW's awareness to the level it is now at.



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- b. As a result of the reduced travel by the general public, partially due to the after effects of 9/11, our industry has seen reductions in the number of vessel trips and the number of vessels in the vicinity of the SRKW's at any given point in time. This has created an economic tipping point which threatens the industry's well being, before any additional adverse impacts, such as undue regulatory impacts;
- c. Any regulations should apply only to the ESA listed animals, namely the SRKW's, not other whales or marine mammals;

We support the Soundwatch program and note that it should be fully funded to provide the administrative structure that allows timely reporting to the industry and NMFS. This will facilitate the effectiveness of the industry self policing model, the Industry Executive Review Committee, contribute to the filling of some enforcement gaps and provide the information required to ensure feedback is provided to those who can utilize it. The industry should also be empowered to enhance, manage and administrate a more elaborate operator training program than we currently manage, this in collaboration with the NMFS.

We encourage you to regulate very carefully, tread lightly and not upset the delicate balance of a fledging and promising industry with significant economic impact which has done so much for the conservation of these animals and which has been world leaders in the development of its industry guidelines (which can be viewed at www.nwwhalewatchers.org) and which has supported the Be Whale Wise Guidelines from the outset. Increasing the minimum approach zone beyond 100 yards would put all that at risk.

Sincerely,

Whale Watch Operators Association Northwest

Captain Dan Kukat, BCom, CA
President and Chair



San Juan Safaris

Whale Watching & Sea Kayaking

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Unlike a lot of businesses, the watchable wildlife/outdoor adventure/eco tourism industry often attracts mission driven, idealist, bright, energetic, wonderful human beings. Thankfully San Juan Safaris is blessed to have scores apply and at present, employs approximately thirty per season.

Our branding message and mission statement is "respectful interaction with wildlife packed with serious fun" and we try hard to live up to that standard.

Since our goal is to educate our guests on all aspects of the environment, I try to develop clear messages to the public and our staff so that they can make their decisions on joining us from written guidelines and policies. I see this as a way to insure our company's message is clear and transparent. The following is our position paper that we have developed for the up listing of the Southern Resident Killer Whales (SRKW). It has evolved over the last three years.

Position Paper

Thirty plus years ago, local San Juan Islanders tell that one could locate where the Orcas were from the sound of gun fire and seal bombs as the whales made their way along the west side of San Juan Island.

Most of you know that Orcas are remarkably loyal and bonded to their family groups. During those "uniformed years" our local pods were also pursued, captured and killed in an effort to display them in aquariums. The trauma and death toll for these mammals was devastating to their clans and many scientists think they still have not recovered from these attacks.

Newcomers to San Juan Island concerned about the Orca talk about boat traffic in the summer when they see twenty to thirty boats out on the west side. Thirty plus years ago, there were as many as 800 - 1000 boats on the water day and night. They all were trying to catch salmon, with their engines and generators going and nets in the water. During the switch from night fishermen to day fisherman, there were up to 3000 boats on the west side. It was said that at night it looked like a "city on the water" All this commotion did not cause the orcas to go extinct, but surely, it must have been a challenge for them. However, wherever there was Chinook salmon, there were Orcas.

A myth that came out of that era was that there were "hundreds" of Orca whales. This most likely happened because individual whales were not identifiable. Some may have been counted twice or multiple times. They also could have been counting **transient Orca, off shore Orca** or **resident Orca**. It was not until the

70's, when the Orcas were identified individually, thanks to Dr. Micheal Bigg, Ken Balcomb, and Graeme Ellis that anyone knew for certain just how many **resident Orca whales** there were. This critical research must be sustainably funded and maintained.

Another perplexing research gap continues to this day that even now no one knows where these **resident Orcas** go or how they survive from late fall to spring and are sighted all the way to Monterey CA. How can we make any headway on recovery when we can't even track them for half of their lives?

We also have seen that pods being viewed the least are suffering the most decline. The state of Washington Department of Fish and Wildlife has this to say regarding the matter: From the WSDF Status of the Killer Whale " Further confounding the matter is the fact that the heaviest viewed pod (J) has shown an overall increasing trend in numbers since the 1970's, and is currently at its highest recorded number. In contrast, L-pod is considered the least viewed pod, but is the only one to undergo a substantial and continuing decline since 1996" (<http://wdfw.wa.gov/wlm/diversity/soc/status/orcafinal>).

In our polarized efforts to protect Orcas, common sense sometimes is ignored. We are spending real dollars to find out if Orcas swim more when they are near boats. That somehow this expenditure of energy would harm their ability to survive. Someone obviously has not told the orcas as they continually breach, tail lobe, spy hop and race around sometimes all the way to Vancouver or the outside of Vancouver Island expending huge amounts of energy, regardless if boats are present.

It seems that our limited research dollars should be spent on **salmon recovery, oil spill prevention, tanker escorts, winter tracking, persistent chemical clean up, mid range sonar effects and stopping raw sewage from entering Orca waters?** Keeping focused on real issues helps set an agenda citizens can trust.

Unfortunately some groups promote their own agenda based on flawed information and science. When that occurs we all lose "environmental capital" This destroys the confidence of our citizens and weakens the environmental movement as a whole".

Many have asked how the up listing of the Southern Resident Killer Whales (SRKW) to Endangered Status will affect the Whale Watch businesses. In its press release, the National Marine Fisheries Service (NMFS) did not emphasize interference from boats. I believe this is because more and more science is pointing towards the lack of prey (Chinook salmon) and the high concentrations of chemicals found in the Orca's body tissue. Second, many believe the SRKW reached endangered status because this small and genetically unique group of whales could be devastated by a single oil catastrophe.

Most whale watch operators feel the SRKW have a better chance of surviving by

this up-listing effort. I also believe that as long as science makes the decisions, "not politics," that govern their recovery, our community and orca will benefit in the long run from the efforts made to protect them.

Most of you are aware that for many years, the Whale Watch Operators Association Northwest (WWOANW) has been sitting down with National Marine Fisheries Service, and prominent whale researchers to develop Best Practice Guidelines, which dictate our behavior around the whales. It is counterintuitive that any one deriving their livelihood from wildlife viewing would purposely harm the resource that keeps them in business. Over the past decade at these cooperative meetings, we have not received any indication that NMFS wished to decrease whale watching activity. Having knowledgeable operators on the water may even help the whales as it is well known that it is the whale watch operators who control the behavior of private boat owners on the water when enforcement and independent monitoring groups are not present.

The Whale Watch Operators Association North West has continued to work with government and non-government organizations, locally and nationally to spread the word of conservation through responsible environmental education. Our collective efforts have resulted in the creation of a voluntary "no go" Orca foraging zone on the west side of San Juan Island, cooperative monitoring efforts with Sound Watch, the development of "Be Whale Wise" brochure and its distribution, along with the continuously updating of Best Practice Guidelines as new science dictates. The WWOANW is also responsible for educating over 300,000 visitors annually on the regional eco-system, and wildlife conservation including killer whales. National Marine Fisheries Service (US) and Department of Fisheries and Oceans (Canada) have both praised our efforts and our proactive efforts on the water.

While calculating the economic impact of thousands of whale watch visitors to a region is difficult, we do know that they contribute millions of dollars to this non-consumptive industry. The non-direct financial contributions are likely significantly higher, and are spread out over many economic sectors. There are few industries if any that can claim the positive economic impacts without a consumptive component. The watchable wildlife industry has its origins in modeling economic stability combined with ecological sustainability.

Regardless of positive efforts and government praise, sensationalism often sells newspapers, and you will read negative statements made by those who oppose boat-based whale watching. However, the truth has not changed and respected science has yet to show significant negative affects on whales from commercial whale watch vessels. The truth is most whale watching companies, ours included, shut down their engines completely whenever whales are present. Even critics of whale watching concede the noise from whale watch vessels is insignificant when compared to tanker and ship traffic in Puget Sound and no one even mentions the huge amount of boat traffic that used to share the whales domain.

Another often-exaggerated claim by opponents to boat based whale watching is

that the whales are pursued constantly on the water. The truth is that even at the peak of whale watch season, there are on average ten commercial whale watch operators in the vicinity of whales near Lime Kiln state park. Most of which operate their engines at less than 7 knots within ½ mile of the whales. Scientists say that at these ranges and speeds, the sound of the vessels make less noise than the ambient sound of the water itself. If you calculate a 3-4 hour whale watch tour could at most spend 30 minutes in the proximity of whales. Of those 30 minutes in the proximity of whales, very seldom are the engines even running. If the engines aren't running should that be considered being in proximity? If you consider 100 to 200 yards as in proximity of whales remember that you're often dealing with a 1000 foot water depth, surface time to breath, day and night, year round, stretched out over a 100 miles or more of daily habitat with three separate Orca pods. Is it possible that proximity is 1% of their life?

Let me be clear, when asked by scientists to adjust our guidelines to reflect new concerns, we change the guidelines to meet that need. We often make guideline adjustments independently. This just recently occurred when "parking in the path of whales" was examined. Since it may be possible that parking in the path of a whale may affect the whales breathing pattern, we agreed to slide to the side of the apparent path and view the whales from the side as they go past. This is an example of pro-active adjustment to new suggestions and science and displays our willingness to employ the precautionary principle of do no harm. I by no means wish to imply that things are always acceptable on the water at all times. We could all do better, but for the majority of the time respect for the Orca and peer pressure works.

At the recent International Marine Mammal Conference in San Diego, our guidelines were recognized as a good model from which other whale watching industries could learn. We will continue to work with both the National Marine Fisheries Service (NMFS) and the Canadian Department of Fisheries and Oceans (DFO) to assure we continue to be a model in the future. The Humane Society is supportive of whale watching, and believes that it is just one of many ways that the general public can save whales worldwide from continued decline. As quoted from their brochure *Save Whales Not Whaling* "go whale watching and experience for yourself the beauty and value of seeing whales in their own habitat".

It is my belief that most concerns for boat interaction could be greatly reduced by creating permanent and adequate funding allowing a minimum of two boats on the water each day when the orcas are present, for the very successful Sound Watch program run by The Whale Museum. Funding could be achieved through a public/private partnership combining county, state and federal funds with contributions from the whale watching industry. When Sound Watch is present everyone has better manners around the whales and the biggest problem, "private boaters" are educated on the spot.

On a personal and very positive note I would like to conclude with some thoughts. In my life time of 60 plus years, I have had the good fortune to see a remarkable shift in human thinking towards wildlife. Efforts by conservation groups, TV series, environmental education school programs and watchable wildlife viewing by responsible operators world-wide have led us from a consumptive to a non-consumptive viewing majority. Whether it be a small bird in the forest, a whale breaching or thousands of migrating wildebeests in Africa, somehow for some reason a large group of us find joy in that experience. It is that joy that moves us all to care and protect our wildlife and the habitat that sustains them.

Bill Wright
San Juan Safaris



June 19, 2007

Lynne Barre
NOAA Fisheries, Northwest Region
7600 Sand Point Way NE
Seattle, WA 98115

Dear Ms. Barre,

As the owner/operator of Sea Quest Adventures I am taking this opportunity to make a few comments on the Advanced Notice of Proposed Rulemaking (ANPR) for SRKW.

My business is located in Sidney British Columbia and we have been in operation for thirteen years. During this time we have experienced many changes in regards to the rules and regulations of whale watching, most of which I feel have been beneficial for the well-being of the whales. During my twenty plus years of observing and studying these animals, I have noticed no change in their behaviour or daily travel patterns. After countless hours of travelling along side these animals I feel that the current regulation of 100 yards is more than enough room to ensure that these whales can go about their normal behaviours. As mentioned by others, I feel the problem is inadequate enforcement not insufficient encroachment regulations.

At Sea Quest Adventures we offer very interactive and educational tours with professional guides that have years of experience. Every trip that we provide our valued customers with has a strong emphasis on the actions that must be taken to ensure the future health of these whales. We feel that the education we provide on our tours helps spread the message to thousands of people per year in regards to the important role that humans have in ensuring the longevity of these whales. As a whole I feel that the majority of whale watching operators have the same priority on their tours which is to educate the public about these magnificent animals of the Pacific Northwest. Without the evolution of the whale watching industry I feel that the whales would be much worse off then they are now because of the lack of public knowledge. The whale watching industry has created education and awareness for these animals unparallel to any other efforts being made. We trust NOAA Fisheries will use only verified science and not rhetoric to make current decisions on the well being of these animals.

In conclusion, I feel it is unfair to penalize the whale watching industry by enforcing a new 200 yard encroachment law when science has proven time and again that the real problem or the number of infractions of private boaters far outweighs the industry operators. As previously mentioned the problem is lack of enforcement not lack of regulations. In my opinion it is does not make sense to target the industry that has actually increased awareness and the preservation of these whales.

Regards,
Liz Madro



SPRINGTIDE VICTORIA WHALE WATCHING

Via email: orca.plan@noaa.gov

June 20, 2007

Assistant Regional Administrator
Protected Resources Division
Northwest Regional Office
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115

Re: Federal Register Docket No. 070125020-7020-01; I.D. 010907A
Protective Regulations for Killer Whales in the Northwest Region under the Endangered Species Act and Marine Mammal Protection Act

Dear Sirs:

Thank you for providing the opportunity for input.

Firstly, we would like to reiterate the Comments made by the Whale Watch Operators Association Northwest (WWOANW) and please consider those Comments integral and part of our Comments. Here we will provide new and additional Comments.

1. Less prey equals fewer predators. This has shown to be true in almost all population studies done on most Mammals. There also seems to be a very high correlation with the population of the SRKW and the available prey. We need to maximize the amount of salmon and other fish available for feed, inside and outside these straights. **STOP ALL SALMON FISHING, COMMERCIAL AND RECREATIONAL UNTIL STOCKS RETURN TO HISTORIC LEVELS AND STABILIZE. REMOVE THE DAMS FROM THE ELWHA RIVER AND OPEN UP THAT VERY PRODUCTIVE HABITAT WHICH HISTORICALLY PRODUCED KINGS OVER 100 POUNDS.**
2. Everett, J-38, died prematurely due to a lowered immune system due to high levels of toxins – so high as a matter of fact that his carcass was considered hazardous waste by Canadian statute and required a special dumping location and procedure. How many other SRKW's are in the same condition? We need to eliminate these toxins from these waters, inside and outside these straights. **STOP THE DUMPING OF TOXINS INTO THE SALISH SEA.**
3. The deaths and disappearances (as we do not find most carcasses) of SRKW's almost always happen in the outside waters of the Pacific Ocean. We need to know what goes on there as the majority of their lives are spent there. We know nothing, or at best, very little. How can we make any decisions without



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this information? We need to research what happens the rest of the year when the SRKW's are in outside waters, where they are not watched. Perhaps this is the most critical habitat as this seems to be where and when (winters) most of the deaths are occurring. FUND RESEARCH OFFSHORE AND FUND RESEARCH OF THE SRKW'S FOR THE OTHER 7 MONTHS OF THE YEAR WHEN THE SRKW'S ARE NOT IN THE SALISH SEA.

4. Why is it that the whales which are watched the most (J-Pod), have the most robust and most stable population numbers? We need to research what happens the rest of the year when the SRKW's are in the critical outside waters, when they are not watched. TAG SOME SELECTED SRKW'S AND MONITOR THEM FROM THE AIR DURING THE WINTER MONTHS AND DETERMINE WHAT IS HAPPENING WHEN THEY ARE NOT UNDER SCRUTINY.
5. Why is it that the whales which are watched the least (L-Pod), have the poorest and most unstable population numbers? We need to research what happens the rest of the year when the SRKW's are in the critical outside waters, when they are not watched. EXTEND CRITICAL HABITAT TO THEIR WHOLE RANGE; DO NOT LIMIT IT TO JUST THEIR SUMMER RANGE.
6. The navy needs to not use sonar in these waters. STOP THE USN AND THE COAST GUARD FROM USING THEIR SONAR AND MACHINE GUNNING WHEN IN THE SRKW CRITICAL HABITAT.
7. Are Fishermen and women (commercial and recreational) exempt from be-whale wise guidelines? Should they be? They need to comply. Any exclusions or limitations to human activity within critical habitat must apply to all sectors including the Navy, USCG, deep sea freighters, cruise ships, tugs, ferries etc. Efficacy will be questionable if applicability is not equal. Further to this, including shore areas that may affect any salmon runs seems appropriate for a complete critical habitat designation.
8. Reunite L-Pod and bring back Lolita. Give them the choice to keep the family unit together.
9. In order to monitor changes in the population, PROVIDE DEDICATED FUNDS for the Center for Whale Research to continue their photo-identification, population demographics and winter distribution research. Funds also need to be dedicated for groups like the Orca Network who are already engaging the public in non-invasive tracking of killer whales while educating participants. These data, though not systematically collected, still assist in understanding the habitat use and movements of particular pods of whales. This will certainly contribute to any critical or important habitat designations.
10. We are in the process of developing an "Ethics of Whale Watching", an informative piece to provide the marketplace with guidance as to what constitutes ethical and legal whale watching and what does not. The marketplace needs to be educated as well. WORK WITH WWOA on this. This will be rolled out by WWOA along with the new disciplinary committee.
11. WWOA NEEDS assistance from NMFS when dealing with operators who consistently push the envelope. WWOA has started this process constructing our disciplinary protocol (through the Industry Executive Review Committee). WWOANW is seeking more formal communication links with NMFS and NOAA (and DFO) to report critical infractions by our members. Based on third party data, such letters will formally request modification of operating behaviors and their effectiveness is partially dependant on NMFS and NOAA interaction. The construction process of such protocol has already begun with NGO's, including Sound Watch.



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12. RECREATIONAL BOATERS NEED CONSTANT EDUCATION because the majority are always new to the area and whale watching. FULLY FUND SOUNDWATCH.

Regulatory steps taken beyond these recommended will significantly and negatively impact our business and thereby our ability to promote the San Juan Islands and Washington State as a tourism destination, reduce jobs, and negatively impact the regional tourism industry including hotels, ferries, airlines, buses, restaurants, not just in Victoria, but the hotels and transportation carriers of our passengers. Those tend to be US based airlines such as Delta, Kenmore, Alaska and international ferries (Clipper, Express, Star, Washington State Ferry) and U.S. based bus companies. People travel from all over the world to visit the Pacific Northwest and view the icon of this pristine area, the Killer Whale. Additional pressures at this time will result in negative economic impacts on the companies which have taken millions of people to see whales in their wild habitat, and thereby raised the SRKW's awareness to the level it is now at. As a result of the reduced travel by the general public, partially due to the after effects of 9/11, we have seen reductions in the number of vessel trips and the number of vessels in the vicinity of the SRKW's at any given point in time.

We support the Soundwatch program and note that it should be fully funded to provide the administrative structure that allows timely reporting to the industry and NMFS. This will facilitate the effectiveness of the industry self policing model, the Industry Executive Review Committee, contribute to the filling of some enforcement gaps and provide the information required to ensure feedback is provided to those who can utilize it. The industry should also be empowered to enhance, manage and administrate a more elaborate operator training program than we currently manage this in collaboration with the NMFS.

We encourage you to regulate very carefully, tread lightly and not upset the delicate balance of a fledging and promising industry with significant economic impact which has done so much for the conservation of these animals and which has been world leaders in the development of its industry guidelines and which has supported the Be Whale Wise Guidelines from the outset. Increasing the minimum approach zone beyond 100 yards would put all that at risk.

Sincerely,

SpringTide Whale Tours

Captain Dan Kukat, BCom, CA, President



Phone: 250-384-4444

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Email: info@SpringtideCharters.com

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Operations: 1207 Wharf Street Victoria BC V8W 1T9

Administration: 4336 Crownwood Lane Victoria BC V8X 5E4

PRINCE of WHALES
812 Wharf Street
Victoria, B.C.
CANADA
V8W 1T3

Submission to:
National Marine Fisheries Service
and National Oceanic and Atmospheric Administration

**Protective regulations for Killer Whales in the Northwest
Region
under the Endangered Species Act
and Marine Mammal Protection Act**

June 20, 2007

To Whom It May Concern:

It is my pleasure to submit to you my thoughts and experiences as the owner of Prince of Whales Whale Watching, located in Victoria since 1995.

First, I would like to congratulate the agencies for a fabulous job well done on the Proposed Plan for the Southern Resident Killer Whales published November 29, 2006.

Second, I commend all parties for agreeing to the BE WHALE WISE guidelines that have been put in place and now widely distributed for several years. While not perfect, the authors of BE Whale Wise recognize that we are dealing with wild animals that are in their space and dimension. We folks in vessels are merely an anomaly on the surface of a very large ocean.

While there are many comments and criticisms that I would like to offer please consider the following subjects for discussion:

1. WHERE ARE ALL THE SALMON?

I am thoroughly convinced that our SRKW's have been robbed of their food base due to over fishing since the bonanza years of the seventies. Why else would they range so far in the winter and concentrate on the various returns to coastal rivers through the seasons, despite the travel distances?

One might also suggest that the destruction of habitat is the villain, however, if the salmon were abundant, natural selection would allow the strongest of salmon to survive the environmental challenges that exist. The Elwa dam issue is another matter.

Unfortunately, all the largest salmon have been caught and the lesser stock have been caught and released. The result is a decline in the brood stock of our fisheries. These large "smilies" might have been the prize in a day of fishing for an Orca.

I would also like to comment that the rest of the food chain is seriously under attack when we are over fishing all other species in the biomass. For instance, with declining spring salmon, why is there even a herring fishery? The eggs are sent to other countries and the protein base is ground up to be used as fish meal. Many articles and scientific reports are documenting the "collapse" of fisheries all over the world.

My recommendation is to focus all research funding into the plight of the fisheries and not researching the actions of the whale watching community.

2. DEAD WHALES OFFSHORE

Every winter we dread the possible report of SRKW that were last seen in our area only to depart for the winter and never come back. The prospect of having a catastrophic event offshore is very real. I was most shocked to hear the reports of two whales (or parts of) recovered this spring under most unusual circumstances. No whale watchers in sight! The interesting event that did happen just prior to the discovery was a joint bombing exercise by both Canadian and US Navy of a derelict war ship to scuttle it off Cape Flattery. Bring on the heavy artillery.

We often hear of large groups of unidentified KW at sea that may have never been seen before. It may well be that the SRKW do have predators at sea and we do not know it. If they are competing for a common food source then there may well be tribal rituals and attacks.

3. ZEALOUS RESEARCHERS

I have great respect for science as I am a Professional Engineer and have a passion for the pursuit of accurate scientific endeavours. I am most curious to always wonder why a researcher who thinks vessels are having an effect, does not just get on a boat and find out what it takes to disturb a whale.

Instead, the whale watching community is accused of harrassment while we are operating to the best of our ability, and then be the subject of observations with such empirical assumptions such as why did the whale not swim in a straight line?

I challenge the authors to go hire their own vessel and determine what constitutes harassment. Enough sunny summers on the slopes of San Juan living a casual life looking through a theodolite!

4. WHALE WATCHING RESTRICTIONS

It is evident that the source of this discussion is based on the premise that whale watchers are doing something detrimental to the marine mammals on our tours. I suspect it stems from the more prevalent pursuit by our critics to wholly damage the commercial prospects of our industry.

As an owner of a fleet of vessels that has shared the whale watching experience with over 350,000 passengers, I think restrictions of any kind will actually force whale watching into even more defined time allocations. This may not work well with the natural shoreline rhythm of the tourist season and an individual's opportunity to be more "whale wise" after an educational tour. Yes, as businesses we are all about numbers, but we are also the reason why interested parties come on a trip and possibly travel from countries far and wide to hear our pitch about the marine ecosystem.

COMMENTS ON PRELIMINARY LIST OF OPTIONS:

Codifying the existing guidelines:

Despite the statistics that SoundWatch tabulate, I do not think the enforcement branches in either Canada or the US have any incidents over the past few years that they feel should have been prosecuted. Clearly, our critics think that there should be punishment for being out of line with the best efforts of the guidelines. At our annual meetings, the enforcement agencies actually congratulate us for a job well done despite the uncertainty of the animals' direction or activity.

So the question should go to the enforcement personnel.....Is there a clear and present need to codify the BE WHALE WISE Guidelines.

Establish minimum approach rule:

The collective agreement from all parties to the BE WHALE WISE document points to the overall satisfaction that 100 yards is a reasonable distance. Only our critics, feel that it should be greater. This is further supported by the worldwide agreement that 100 yards is a safe distance to be observing, assuming that the vessel is at rest and possibly with engines off.

I do believe the SRKW Recovery team feels that 100 yards is reasonable.

Prohibit vessel activities of concern:

The BE WHALE WISE Guidelines already outline these activities. Would prohibition stop some errant behaviour? Not likely, since the gregarious offender probably just needs a stern talking to by the authorities and would not attempt such a dumb move again. All the described activities are generated out of operator ignorance. This is the basis for the ongoing effort to educate the boating public and especially the school kids.

Establish time-area closures:

Since we are in a no take activity and we have no evidence of any disturbances, then why would you attempt to restrict something without having a scientific basis. Again this plays squarely into the hands of our critics who have seldom been on a trip to understand the whale watching protocol. This also brings to another question....why has there never been a boat owner screaming for regulations. Quite likely, all those smarter than average successful people in society (boat owners) know that there is no harm in boating in the vicinity of Orca with the consideration of the animals at heart, i.e. participating in the spirit of the guidelines. Furthermore, show us where the passengers are complaining about

lack of regulations. When did anyone think we tired out the SRKW? No evidence to date, just the imagination of our critics posing as researchers.

Operator permit or certification:

Only a truly ignorant politician or bureaucrat would think that you could add a "whale watching" certificate to an activity that is already so benign.

Even the best researchers, enforcement agents, and professional boat handlers get caught offside by whales relocating and surfacing unexpectedly.

Really errant operators will get the warning from the NMFS, NOAA, or DFO. Trust me, the fireside chat works, as a means to changing behaviour.

The rush to get into our industry is long over and unfortunately we are still wringing out the excesses of over building of boats. With the new reality of post 911, tourism markets are changing due to currency shifts, demographics, fuel prices, passport issues and general economic conditions declining. Let market conditions deal with the attrition of operators that do not have a solid customer base or the resources to compete. Messing around with permits will surely skew the viability of the industry and inhibit the technological progress of whale friendly equipment such as the Ocean Magic class of vessel that is our flagship at Prince of Whales.

Laissez-faire.

Conclusions:

- 1. There is no strong argument for embarking upon a regime of regulations to test the court system and all the litigious**

lawyers that will quickly become experts in whale watching.

2. There are no areas in the U.S. waters that require geographic restrictions....i.e. no confined areas such as an inlet or bay. The existing two areas off the west side of San Juan were implemented to appease the residents of San Juan Island. Over the past few years with the BE Whale Wise doctrine in place, there are almost no complaints from residents of errant behaviour by the industry vessels.

3. There is no need for further management options for regulating vessel interactions with Killer Whales.

4. Scientific and commercial information regarding the effects of vessels on killer whales would be interesting from an academic's perspective but I sense that few scientists at this point have an obvious suggestion for further vessel interaction research. The accumulation of commercial information might highlight our activities but it does not put into relative perspective the whale's activities.

5. Regulating vessel interactions of the commercial whale watching fleet will surely kill the best educational presentation for the SRKW. Even the Canadian vessels contribute to the awareness of the islands of the San Juan County and its surrounding ecosystem. A restriction of the boating activity of watching whales could effectively damage the tourism prospects upon which the coast has built a fine reputation.

6. Other relevant information NMFS should pursue are a geneological understanding of the SRKW with the use of blubber samples. The U.S. Navy should report all activity offshore to do with sonar or munitions. Agencies should rely on their own observers such as wildlife enforcement officers and not on NGOs with a need to sustain funding for their

programs.

Closing comments:

Keep up the good work and believe in the industry that understands the SRKW and respects their habitat.

Respectfully submitted,

Alan McGillivray, P.Eng., M.B.A.



CLIPPER
Vacations

June 20, 2007

Chief, Protected Resources Division
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
1201 Lloyd Boulevard, Suite 1100
Portland, OR 97232

Re: Comments on Draft Recovery Plan

Via email orca.plan@noaa.gov

Dear Sir or Madam:

Thank you for the opportunity to comment on the Advance Notice of Proposed Rulemaking (ANPRM) for the Recovery Plan for the Southern Resident Killer Whales (SRKW). Clipper Navigation has provided ferry service between various ports in Washington State and British Columbia for over twenty years. In addition we have operated a dedicated whalewatch with trained naturalists for over ten years. Since we have already submitted comments concerning vessel noise and effects for the draft conservation plan, we will comment on the economic impact of whalewatching on the local coastal communities and the vessel operators that serve them. This was particularly requested by your staff in public meetings held in Friday Harbor and Seattle.

Dan Kukat, President of Whalewatch Operators Association Northwest (WWOANW), estimated eight years ago that the Whalewatch industry (not counting ferry operators like Clipper) carried between 300,000-350,000 passengers a year, and created \$132,000,000 dollars in direct and indirect economic activity. Being conservative and estimating the industry has grown twenty percent since then, this industry serves over 400,000 passengers annually creating \$160,000,000 dollars. It is a major part of the economies of Victoria, Friday Harbor, Anacortes, Port Townsend, and to a lesser extent the coastal communities from Seattle to Vancouver, BC.

On a smaller level the whalewatch part of our daily trip makes the ferry service between Seattle and Friday Harbor economical. With increased fuel and labor costs the Friday Harbor service would not pay for itself. Each year over 15,000 passengers use our ferry service, which has become a popular and vital link. We figure 10,000 of these are daytrippers and 5,000 go to stay overnight, join yachts, tours etc. During the mid-day over 12,500 go whalewatching on board the same ferry. This dual use is what justifies the vessel to run at all.

The local community likes our service because our passengers don't bring their cars, congesting local roads. They just come to enjoy themselves, leave some of their money behind, then return. The downtown to downtown link also keeps cars off the highway from Seattle and points south to Anacortes to use the Washington State Ferry. Our service also serves as feeder for a Victoria to Friday Harbor ferry run by Victoria Express. This service also connects to the Olympic Peninsula. It is doubtful that the Friday Harbor to Victoria leg



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would be economical without through passengers ticketed from Seattle. This whole private transportation system would stop if the eco-tours were restricted or discontinued. We will try to estimate some of the impacts if just the Clipper service stopped. This assumes these people would vacation elsewhere.

- \$75,000 in lost parking revenue in Seattle (5000 cars x \$15)
- \$3,000,000 in ticket fares
- \$150,000 in onboard sales (\$10 per passenger)
- \$250,000 in hotel packages (1200 room nights)
- \$1 00,000 sales in port from daytrippers (\$10 average per passenger)
- \$500,000 sales from overnight guests (\$100 per passenger)
- \$30,000 port fees for Friday Harbor (a large sum for a small port)
- \$150,000 annual vessel maintenance to local vendors/shipyards
- \$150,000 in fuel sold

Just these items total \$ 4,400,000

It is hard to estimate job loss as there are direct and indirect job losses. We will try. For direct job losses Clipper employs two crews of six people each to run the ferry. At least twelve seasonal boat jobs would be lost, one night cleaner, and at least two reservations staff. For the boat if daily labor costs are \$1500 then \$180,000 in wages would be lost. Reservations and dock staff would lose another \$25,000.

Indirect jobs are harder to estimate. Various models are used but if one just estimates that a seasonal job is created for every \$50,000 in economic activity not associated with running the vessel itself, the number of lost indirect jobs would be 1.5 jobs for Seattle and 12.5 jobs for Friday Harbor.

We are providing data for your analysis on an economic level. Over \$4,500,000 in lost economic activity and approximately 30 seasonal jobs would be lost if just this one vessel shut down. If you multiply that out on an industry level using the numbers above you can see that a huge loss in economic activity and jobs would result if this industry was restricted. Most of these losses will be borne by small operators who love and want to protect the SRKW. Much of our first letter focused on building a constituency, and from a regulators level THAT may be more important than the revenues generated by the commercial whalewatchers. Over 400,000 people educated and interacting with these creatures every year will create support for conservation efforts and give your program a much better chance of being accepted and funded. It is a political as well as an economic world, and regulation should be crafted with that in mind. Supporting an activity that creates the constituency for your regulation makes perfect sense.

To summarize our position one last time:

- Codify existing "BeWhaleWise" guidelines as regulations and existing restricted areas
- Apply rules to non-commercial and fishing vessels
- Fund Non government entities such as Sound Watch, Orca Network, and Center for Whale Research



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- Study sound effects from vessels more thoroughly before changing viewing distances
- Avoid adding restricted areas just for ease of regulation
- Add Hood Canal and coastal areas to critical habitat
- Repatriate Lolita to "L" pod if that is feasible
- We offer our vessel as a research platform during our regular season

Thank you for this chance to comment.

Yours truly,

Darrell E. Bryan
Executive Vice President and General Manager

DEB/mb-aa/0607-07



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Vacations

June 20, 2007

Chief, Protected Resources Division
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
1201 Lloyd Boulevard, Suite 1100
Portland, OR 97232

Re: Addendum to Comments on Draft Recovery Plan

Via email orca.plan@noaa.gov

Dear Sir or Madam:

This is an addendum to our previous letter to further detail our position on several proposed regulatory actions. We have done a cursory review of regulations in other parts of North America as well as internationally. We have concluded the following:

1. 100 yards/meters is pretty much standard as approach distance for most types of whales on an international basis. Some types of whales such as Right whales are more prone to be involved in vessel strikes and greater approach distances as well as stricter speed limits are being considered. Killer whales are more maneuverable and aware of their environment. There has been one minor strike incident regarding the Southern Resident Killer Whales (SRKW) in recent memory. I don't think the scientific data exists that proves that the 100 yard approach needs to be extended in any way. We should go where the science leads. If research conclusively proves that an increase is necessary, I think most concerned commercial operators will accept and abide by the regulations.
2. The idea of giving whales "days off" would make running a whalewatch business successfully much more difficult. We have outlined the economic and political advantages to having a responsible whalewatch industry in previous letters. On the flip side the negative effects have not been conclusively proven to be true. A much better solution to taking the pressure off these animals is to enforce the time limit for viewing them. The Whale Watch Operators Northwest (WWOANW) could assist in this regard. A possibility would be for vessels to verbally check in and out on a channel which is being monitored and recorded. Failure to check in/out could result in a penalty. This would be when they were in position. On occasion a vessel has to reposition and shouldn't be penalized time-wise for that.
3. Codify existing boat free zones off Lime Kiln Park and the West Coast of San Juan Island. The existing regime has served us well, and there is no compelling reason to change it based on available science.
4. Consider a limited entry/licensing scheme. WWOANW will participate in setting this up in a way that is fair and balanced to all stakeholders.



CLIPPER
Vacations

Thank you for this chance to comment.

Yours truly,

Darrell E. Bryan
Executive Vice President and General Manager

DEB/mb-aa/0607-08



June 19, 2007

Lynne Barre
NOAA Fisheries, Northwest Region
7600 Sand Point Way NE
Seattle, WA 98115

Dear Ms. Barre,

As the owner of Vancouver Whale Watch and a concerned citizen I am taking this opportunity to make a few comments on the Advanced Notice of Proposed Rulemaking (ANPR) for SRKW.

My company is located on the Fraser River in the fishing village of Steveston, just 30 minutes from downtown Vancouver. We are going into our ninth year of whale watching and in the summer we employ about 30 people. All of our marine mammal viewing trips are managed by a team made up of a captain and a naturalist. We take this team approach as our naturalists, most of whom have university degrees in marine biology, and our captains, who have read and signed off on our whale watching guidelines, are both vital links in our approach to viewing marine mammals. The concern for the well being of the SRKW is always our main focus. Our trips are usually 4-5 hours long and the time spent in the vicinity of whales averages about 40 minutes. The rest of the time we are travelling through the Strait of Georgia and observing other marine mammals as well as examining other aspects of our eco-system. So you can see that we call ourselves whale watchers, but really only spend a limited time with the whales.

When potential problems arise, the organization to which most whale watching companies belong, the Whale Watchers Operators Association North West (WWOANW), reacts quickly and responsibly. Several years ago, for example, "parking in the path of whales" was raised as an issue by several researchers and the WWOANW promptly rewrote its guidelines to stop the practice. We look at our vessels as floating classrooms where we have the opportunity to share our knowledge of eco-systems and explain to our passengers the importance of protecting the whales and the environment that sustains them. Most people in the industry share this perception of our work.

I am writing this letter in response to NMFS requesting information and comments on whether – and if so, what type of – conservation measures, regulations, or other measures would be appropriate to protect killer whales in inland waters of Washington. In your background you say that the potential impacts of whale watching on killer whales remain controversial and inadequately understood. Although numerous short-term behavioural responses to whale-watching vessels have been documented, no studies to date have demonstrated a long-term adverse effect from whale watching on the health of any killer

whale population in the northeastern Pacific. Both resident populations have shown strong fidelity to their traditional summer ranges despite more than 25 years of whale watching activity (as well as even longer periods of intense commercial fishing vessel activity). The most watched pod (J-pod) has shown an overall increasing trend in numbers since the 1970s and is currently at its highest recorded number.

Our company does a lot of whale watching in the region of the southern Strait of Georgia. This area has experienced 100 years of intense commercial fishing vessel activity. I have personally watched killer whales work around a fleet of 1500 gill-netters all of which had a net of 1¼ mile in length behind each vessel, the whales did not show any signs of stress.

You indicate that more research is needed in the area of effects of vessels on whales. Whale watchers are in total agreement and would be happy to assist in research programs as we have in the past. Unfortunately for us whale watching has become a very political issue and some individuals have chosen to blame commercial whale watchers for any loss of killer whales. We only ask that the people conducting this research do so without bias and work within the bounds of peer reviewed science.

Following are my comments on your preliminary list of options:

1) *Codifying the current Be Whale Wise Marine mammal viewing guidelines.*

This is a good idea and would allow enforcement of these provisions and penalties for violations.

Since 1994 the Whale Watcher Operators Association North West has established itself as a model for other marine mammal watching groups worldwide in providing stringent and workable guidelines. The WWOANW has worked closely with NOAA, Washington State Fish and Wildlife, American and Canadian Coastguards and DFO to promote the beneficial aspects of whale watching, to educate people and to inspire the protection of killer whales and the environment. Use the WWOANW guidelines as a template for an expanded version of the Be Whale Wise guidelines.

2) *Establish minimum approach rule.*

Establishing a minimum approach regulation, similar to ones used in many parts of the world, of 100 yards is appropriate. The suggestion of more than 100 yards would make viewing from vessels very difficult. As you suggest, these provisions would have to allow for exceptional situations in which marine mammals approach vessels, as well as situations in which approach is not reasonably avoidable.

3) *Prohibit vessel activities of concern.*

The current guidelines already address the activities of concern that you mention: using vessels to herd whales, surrounding whales or otherwise preventing a reasonable means of escape, positioning a vessel on their predictable path (minimum 100 yards on either side), separating calves from attending adults, approaching whales at above specified speeds, or running a vessel through a group of whales.

4) *Establish time-area closures.*

There are two voluntary no-boat zones off San Juan Island that commercial whale watching companies avoid. Keeping all boaters out of these areas, while difficult to enforce, is a good idea. One of the reasons that these two areas were established was to facilitate shore based viewing. NMFS and NOAA recognize that there are individuals, as well as groups, that are totally against any whale watching from vessels. Some of these people actually promote only shore based operations. There are approximately 300,000 people that go whale watching in this area in the summer. Most of these people could not afford the cost or have the time to go and sit on one of the beaches on San Juan Island and wait for a pod of killer whales to go by. The economic benefits that these 300,000 tourists bring to all the communities in the N.W. are immense.

Economic studies, such as the 2006 study "Understanding the Potential Economic Impact of Marine Wildlife Viewing and Whale Watching in California: Executive Summary" by Linwood H. Pendleton, should be reviewed to truly evaluate the economic value that marine mammal viewing has to the economy. As quoted in the Pendleton study, *"Numerous studies have demonstrated the economic value of wildlife viewing, especially whale watching. Whale watching contributes to local economies both in direct revenues (and the jobs these revenues support) and in the overall economic wellbeing of coastal users."* Similar studies should be conducted before we take the drastic steps that some of you have suggested, such as a moratorium on all whale watching.

Prohibiting whale watching for one or more days a week might sound logical, however, to enforce such a program would require a group of enforcement vessels to surround any whales and direct any approaching vessels away from the whales. Would this program apply only to commercial vessels and not private boaters? We have 90 whales in our three Southern Resident Pods. They could be anywhere in this area in the summer and generally they are found in separate groups. If there were day closures of SRKW's our vessels would still conduct wild life tours. Does this mean that if we happen to come across some SRKW we have to flee as someone might observe our boat in the vicinity of whales? Does this mean that if someone reports one of my vessels in the vicinity of whales D.F.O. might want to interview my captain, naturalist or perhaps some of my passengers to see if indeed they saw whales on the trip? Can we look at Transient killer whales on these days? I could continue writing more about the impossibility of trying to enforce this idea, but the point is that what sounds logical is totally unworkable.

Trying to explain to a tour agent from Europe, who is booking a whale watching trip, that we only can operate on certain days of the week would be difficult, and some bookings are made years in advance. Our tours operate from the Lower Mainland near Vancouver, which is an area that is very susceptible to windy days. We are forced to cancel trips on average two to five days a month due to bad weather. Limiting our operation to fewer days would make survival as a business more difficult.

5) *Operator permit or certification program.*

The idea of a certification program or licensing issuance is one that has been discussed in the past by WWOANW, D.F.O., and NMFS; perhaps it is time for such a program - my recommendation would be that the above groups would be the only ones making the

decisions on the structure of such a program. The concept of a certified company or operator being able to approach the whales to a distance of 100 yards, and a different approach limit for non-certified companies, has merit and has worked in other parts of the world.

We all recognize that the recovery of the SRKW is a long term cooperative effort that will slowly evolve as more is learned from research and monitoring. The commercial whale watching community is ready and anxious to get on with this project and increase the number of our Southern Resident Killer Whales.

Sincerely,

Cedric Towers

Cedric Towers
President
Vancouver Whale Watch



Pacific Cruises Northwest, Inc. - 355 Harris Avenue, Suite 104 - Bellingham, WA 98225
360.738.8099 - 800.443.4552 - Fax 360.738.7685

20 June 2007

Assistant Regional Administrator
Protected Resources Division
Northwest Regional Office
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115

RE: ANPRM - Docket No. 070125020-7020; I.D. 010907A - RIN 0648-AV15.

To Whom It May Concern:

Thank you for the opportunity to comment on the above mentioned Advance Notice of Proposed Rulemaking.

Our company has been operating passenger ferries, sightseeing tours and wildlife/whale watching cruises from Bellingham and Friday Harbor since 1987. As the SRKW population is an important piece of this equation we feel we have a big investment in their well being.

That said I believe the list of options for consideration listed in the ANPRM are purely optical. I think it is politically convenient to focus this time and energy on the visible whale watching industry rather than getting to the less popular and sensitive problems of food source and food chain contamination.

Until we are willing focus on the scientifically verifiable food supply issues we will continue to do a disservice to the SRKW population. These animals deserve the respect of focusing on the real issues affecting them and not the politically convenient ones.

We request that the National Marine Fisheries Service maintain the current regulations of the Marine Mammal Protection Act and begin focusing an earnest effort on the issues of SRKW food supply.

Thank you for your consideration in the rulemaking process.

Sincerely,

Capt. Drew M. Schmidt
President

June 19, 2007

emailed to: orca.plan@noaa.gov



Ms. Lynne Barre
NOAA Fisheries, Northwest Region
7600 Sand Point Way NE
Seattle, WA 98115

Dear Ms. Barre,

Re: Vessel effects on Killer Whales

We operate our eco-tour business out of Victoria, BC, run four vessels and employ up to 20 people during the summer. It is generally recognized that vessel traffic may potentially have an impact on the whales. Our comments are based on the scientific data currently available and our observations as a company engaged in whale watching during the last 9 years. Some of our on-the-water staff are biologists and have been engaged in whale watching for many years prior to the establishment of this company. We are members of WWOANW and are active in positive conservation efforts, in particular with the "Goldstream Volunteer Salmonid Enhancement Association". One of our owners currently serves as president of the association. We are most concerned with prey availability for Southern Resident Orca population as we believe that without adequate food in this area we may indeed see this group with less frequency.

It is generally recognized that vessel traffic (and vessel density) in and around the local foraging route of the SRKW's in recent years has seen a marked decline. This is due in great part to the absence of the many hundreds of commercial fish boats that used to frequent the west-shore of San Juan Island. Fewer whale watching vessels exist now than 7 years ago and less time on each trip is generally spent in the vicinity of whales.

J-Pod in particular is subjected to the most vessel traffic in local waters due to its extended stays in this area each year. One would imagine that this sub-group would also be the most affected by vessel traffic. The curious fact is that this pod is in fact thriving better than either the K's or L's, which spend far less time in these populous and trafficked areas of the Pacific Northwest. This certainly is an intriguing conundrum, because it makes every study concerning the impacts of vessel traffic somewhat subjective and the sometime negative conclusions extremely suspect.

Notwithstanding all the above comments, we are fully supportive of any measures that may enhance opportunities for this group of whales to flourish and be healthy for the long term, which is an absolute prerequisite for the eco-tour industry to survive into the future.

Codify the current Be Whale Wise marine mammal viewing guidelines

A good concept, but the current "Be Whale Wise" is fraught with inadequacies and anomalies, which resulted from summarizing the guidelines established by the WWOANW. In any event, the "Be Whale Wise" document was created specifically as a simple summary-document for the general recreational boating public. In its current form it is subject to being interpreted in ways not originally intended.

Establish minimum approach rule

The current guideline of 100yds translates in reality to an average viewing distance of at least 150yds for those operators who take this provision seriously. Beyond 150yds, the viewing experience becomes far more passive and unemotional. I am firmly convinced that the emotional engagement of the many hundreds of thousands of participants each year with these animals is one of their best chances of survival. Our industry is educating the public and raising awareness of the critical issues facing this population in a sterling fashion. In summary, all current data points to 100yds being adequate. We recognize that 400yds is a potential minimum for an endangered species. In practical terms however, there are several endangered species (birds in particular) that cannot even be identified at 400yds! The real issue to be addressed is the method of enforcement, and the provisions for unavoidable closer contact, which obviously could occur irrespective of any particular minimum distance that may be mandated. It is obvious when viewing these animals over many years that they remain curious and they are not apparently averse to approaching boats of their own accord.

Prohibit vessel activities of concern

We agree with the outline of activities in the proposed rules with the following exception: positioning a vessel in their predictable path. This presupposes that the whales are predictable, (which they are only sometimes) and allows for subjective interpretation of the skipper intentions. It would behove the integrity of the process with respect to implementation, to include a provision relating to repeated offence in order to establish intent.

Establish time-area closures

Additional time-area closures are not something that we would be able to survive as a business with our current marginal profitability. This is uniform across our industry. In essence however, it has to be recognized that substantial time area-closures already exist. Firstly, the whales are not dependant upon daylight in order to forage or engage in any other activity related to their life process. Whale watch vessels are only in the vicinity of whales for about 8 consecutive hours a day and there are periods during this 8 hours that boats are absent from the whales due to the practical commercial considerations of departure times. In addition, whale watching is conducted for a relatively short season.

Operator permit or certification

This concept has been applied in many parts of the world, with varied success. We support this approach, provided that certification requirements are endorsed by our association rather than being arbitrarily imposed.

Dedicated to pro-active conservation and responsible wildlife viewing,
Yours truly,

Anton Roberts (president)

Subject: comments

From: Anna Hall <annahall@shaw.ca>

Date: Wed, 20 Jun 2007 22:24:17 -0800

To: Orca.Plan@noaa.gov

To Whom it May Concern,

Thank you very much for taking the time to consider public comments on the proposed consideration to enact regulations with regard to vessel traffic in the vicinity of southern resident killer whales.

In light of your requested comments, I submit the following:

1) On the advisability of, and need for regulations. The current Be Whale Wise guidelines have been internationally developed with input from respected researchers, monitoring groups, managers, enforcement officers and whale watch operators. The respect and commitment to these guidelines should not be discounted. Based on recent discussions, it appears that the sector that is the least informed is the recreational boating community.

If vessel regulations are to be implemented. They should reflect the current Be Whale Wise as they are accepted, based on science and expert opinion, and are now standard operating procedure for commercial operators.

If regulations are to be implemented, then it seems appropriate that the commercial whale watch industry be consulted with, as it is they who set the example for the recreational boating community.

Furthermore, if any regulations are to be successful, they should be aimed at the very small percentage of boaters who intend to violate guidelines. The vast majority of boaters appear willing to follow guidelines once they know such operating procedures exist. In times of limited resources, any move for regulation must include an educational component, as the current social atmosphere is one of conservation and respect for southern residents.

The goal of the regulation if implemented must be to help in the conservation of killer whales, not to serve as a cash source from fines.

I would prefer to see the effort and funds aimed at salmon conservation, toxic loading reduction, and determination of winter distribution and threats that exist within that range.

Furthermore, the effects of military activity including sonar and underwater detonation must be examined. Two dead whales were found after international military exercises on the west coast of Vancouver Island. Whether these are related is not currently public knowledge.

2) If regulations are implemented, then they should apply to US waters that are considered southern resident killer whale range, and this seems impossible given the scale and cost of monitoring.

Furthermore, if regulations are not applied to all vessels, including ferries, fishing boats, tankers, tugs, etc, then the regulation is discriminatory. If regulations are not equally applied then the intent is clearly not for the conservation and well-being of the animals.

3) Management options. Any management options that are considered must be based on conservation of the animals and not those that are easiest to employ. Voluntary closures already exist. Providing a certificate/permit for commercial operators is redundant unless it permits them to do something that the recreational boater cannot.

4) Scientific and commercial information. It would be most useful to base decisions on the best available

science, not just the available science. Making judgments based on work that is incomplete, focused on a different community or tests outdated operating procedures is irresponsible.

5) Economic effects. A large component of commercial whale watching is wildlife education. This can be achieved with the current Be Whale Wise guidelines. Increasing viewing distances will reduce the efficacy of on-board education, especially on smaller boats. This has the potential to significantly impact the economic situation of both company owners, and employees.

6) Additional information. Communication and cooperation are our best chances of success for killer whale conservation. Engaging members of the boating community in meaningful consultations will go further than any restrictive regulation. Furthermore, it is well known that these animals require salmon to survive, and that their habitat and food are contaminated to levels that reduce immune function and reproductive capabilities in harbour seals (the models used). Why do we not see the same level of concern for these aspects of killer whale conservation? Is it because it is too difficult to tackle? If so, then applying vessel regulations because they are the simplest to enact, is not sufficient to achieve real conservation.

If the same level of effort, energy and time were applied to these other risk factors as has been applied to vessel operation over the past few years, then we may actually achieve a significant improvement in southern resident killer whale habitat.

I am only in favour of vessel regulation if the basis is scientific, the application is equal, commercial operators are involved in the process as this has the ability to affect their daily lives, and that the same level of action is aimed at other risk factors including environmental contamination and salmon stocks.

To best ensure the long-term survival of southern resident killer whales we need to cooperate, communicate and tackle some very difficult issues. Anything else may be interpreted as a band-aid solution that is unlikely to significantly help the whales survive.

Thank you again for considering my comments.

Best regards,

Anna Hall

Prince of Whales Whale Watching
Victoria, BC

To NOAA Representatives:

The following comments reflect are intended to provide feedback to the proposed rule making regarding boat behavior around killer whales.

Having invested 11 years of my life in this industry, and over 1200 days on the water in the presence of our Southern Resident Killer Whales, it is difficult for my comments to remain focused on the Proposed Rule Making Alone.

First and foremost, I support the ESA listing. I feel however, that the Recovery Plan is not specific enough in terms of critical habitat and prey recovery. You may be asking yourself why I'm commenting on this now. It's impossible to address propose rule making without the perspective of the rest of the plan. It is my strong opinion that there has been too much emphasis and money spent on boat behavior around the whales, and spending valuable time and money on studying potential vessel effects.

Looking at the larger picture, I do feel that having greater NOAA or WDFW presence on the water enforcing current laws would be sufficient in preventing harassment of Southern Resident Killer Whales. I do not feel however, that this is addressing the larger issue with Southern Resident Killer Whales. These whales have shown very strong site efficacy over the years despite captures, shootings, seal bombings, and all types of other aggressive harassment. So in the big picture, it is clear that regardless of harassment, the whales are going to remain here. Let's get more NOAA and WDFW patrols out there to enforce the MMPA.

If NOAA wants to impose new laws, then let's keep in mind what is working now. The commercial Whale Watch Operators and all the government and NGO's have a working model right now. Let's use the distances from Be Whale Wise, and give money to enforcement for more presence on the water and more public education in critical areas before boaters get close to whales.

I have been involved with discussions with both governments, NGO's, and other interest groups. The WWOANW guidelines have always been open to changing due to science. I personally feel the "STOP AND WAIT" sequence was best for the whales, as do many researchers. Unfortunately for the public viewing from the shoreline, this did not always look good and so we were pressured to stop this. "Stop and wait" assured no sound, so potential for collision, no props turning, a spread out whale watch fleet, predictable boat behavior, no sound. In the mind of the whale, this must have been easier than asking us to parallel at 100-200 yards. I point this out, because I feel we have been pressured into operating in a less than ideal manner by the public, NGO's, and both NMFS and DFO. We need to make decisions based on what is good for the whales, and some of the guideline changes and proposed changes are getting away from that.

In summary, I feel the recovery plan was light on spending money where it counts, which is determining critical habitat, and helping salmon recover. The research dollars right now are being spent mostly on vessel related research. Let's work together and agree on

the appropriate approach distances and viewing sequences, and then move on to the real issues. Salmon recovery is very important, tug escorts for all container ships and oil tankers, and protecting salmon and forage fish habitat. We need more healthy bio mass.

Thanks for your time in listening to these comments. More presence of enforcement boats will resolve the most egregious harassment issues. We can all agree on Be Whale Wise. Then let's go forward with real recovery issues. How are we going to bring back salmon for the whales, and stop introducing toxins into the eco system that are negatively effecting the SRKW.

Sincerely,

Brian Goodremont
brian@sanjuansafaris.com
360-472-0582

Subject: Comments of Proposed Rulemaking for SRKW's
From: San Juan Excursions <sanjuanex@watchwhales.com>
Date: Wed, 20 Jun 2007 23:58:22 -0700
To: Orca.Plan@noaa.gov
CC: Lynne.Barre@noaa.gov

June 20, 2007

Lynne Barre
NOAA Fisheries, Northwest Region
7600 Sand Point Way NE
Seattle, WA 98115

Dear Ms. Barre,

As the President and General Manager of San Juan Excursions, Inc., I appreciate this opportunity to present the views, comments, and overall position of our company regarding the Advanced Notice of Proposed Rulemaking for the SRKW's, which are such a big part of our business.

Our company is located in Friday Harbor, WA. We have been in continuous operation since 1994, and this is our 14th year of operation. We are in full operation with one, four hour tour, daily from May through September. We employ about 14 full and part time employees during this time period. Our vessel, Odyssey, is USCG certified for 97 passengers and 3 crew, but we rarely book more 80 passengers on our trips, and this only happens a few times during the busy months of July and August. Our Captain is required to have a current 100 ton Masters License, and is well versed on and required to observe the current guidelines for responsible whale watching. Our 2 deckhands are certified marine naturalists, many of which also work at the Whale Museum and volunteer for Sound Watch duty as well. We are using bio-diesel in our, very fuel efficient, Volvo diesel engines. During 2006 we were the only whale watching company that had no violations or write ups for our operation and vessel behavior around the whales. It would be a financial disaster for us if any new regulation would require us to maintain a distance of more than the present 100 yd. limit. Please do not do this to our industry because it would put most of us out of business.

We have carefully read the comments of Shane and Jennifer Aggergaard of Island Adventures, Inc., Cedric Towers of Vancouver Whale Watch, and Dale Martinis of Private Whale Watching. We completely agree with everything they have said and our position on all of these matters is virtually identical to theirs, so please allow us to make their comments ours as well. We have contacted them for their permission, and they agreed to allow us this privilege. Please feel free to call us if you have any questions. Recent serious health conditions have prevented me from spending more time on this matter, but my fellow whale watch operators listed above have done an excellent job of addressing these issues in a true, accurate, and responsible manner. With this in mind, please consider their comments as though they were ours as well. These comments are listed below our signature lines in this email for your examination and review. We truly appreciate your consideration and understanding.

San Juan Excursions, Inc.
Roger & Linda Hoff, Owners

Ph: 360-378-6636
Fax: 360-378-6652
Roger's Cell: 360-317-8250
Toll free: 800-809-4253 or 888-88-WHALE
Website: www.watchwhales.com
Email: sanjuanex@watchwhales.com or hoffr@televar.com
Address: PO Box 2508, # 2 Spring St. Landing, Friday Harbor, WA 98250

The following position, which we share, is from Cedric Towers letter to you:

When potential problems arise, the organization to which most whale watching companies belong, the Whale Watchers Operators Association North West (WWOANW), reacts quickly and responsibly. Several years ago, for example, "parking in the path of whales" was raised as an issue by several researchers and the WWOANW promptly rewrote its guidelines to stop the practice. We look at our vessels as floating classrooms where we have the opportunity to share our knowledge of eco-systems and explain to our passengers the importance of protecting the whales and the environment that sustains them. Most people in the industry share this perception of our work.

I am writing this letter in response to NMFS requesting information and comments on whether – and if so, what type of - conservation measures, regulations, or other measures would be appropriate to protect killer whales in inland waters of Washington. In your background you say that the potential impacts of whale watching on killer whales remain controversial and inadequately understood. Although numerous short-term behavioral responses to whale-watching vessels have been documented, no studies to date have demonstrated a long-term adverse effect from whale watching on the health of any killer whale population in the northeastern Pacific. Both resident populations have shown strong fidelity to their traditional summer ranges despite more than 25 years of whale watching activity (as well as even longer periods of intense commercial fishing vessel activity).

The most watched pod (J-pod) has shown an overall increasing trend in numbers since the 1970s and is currently at its highest recorded number.

Our company does a lot of whale watching in the region of the southern Strait of Georgia. This area has experienced 100 years of intense commercial fishing vessel activity. I have personally watched killer whales work around a fleet of 1500 gill-netters all of which had a net of 1¼ mile in length behind each vessel, the whales did not show any signs of stress.

You indicate that more research is needed in the area of effects of vessels on whales. Whale watchers are in total agreement and would be happy to assist in research programs as we have in the past. Unfortunately for us whale watching has become a very political issue and some individuals have chosen to blame commercial whale watchers for any loss of killer whales. We only ask that the people conducting this research do so without bias and work within the bounds of peer reviewed science.

Following are my comments on your preliminary list of options:

1) *Codifying the current Be Whale Wise Marine mammal viewing guidelines.*

This is a good idea and would allow enforcement of these provisions and penalties for violations.

Since 1994 the Whale Watcher Operators Association North West has established itself as a model for other marine mammal watching groups worldwide in providing stringent and workable guidelines. The WWOANW has worked closely with NOAA, Washington State Fish and Wildlife, American and Canadian Coastguards and DFO to promote the beneficial aspects of whale watching, to educate people and to inspire the protection of killer whales and the environment. Use the WWOANW guidelines as a template for an expanded version of the Be Whale Wise guidelines.

2) *Establish minimum approach rule.*

Establishing a minimum approach regulation, similar to ones used in many parts of the world, of 100 yards is appropriate. The suggestion of more than 100 yards would make viewing from vessels very difficult. As you suggest, these provisions would have to allow for exceptional situations in which marine mammals approach vessels, as well as situations in which approach is not reasonably avoidable.

3) *Prohibit vessel activities of concern.*

The current guidelines already address the activities of concern that you mention: using vessels to herd whales, surrounding whales or otherwise preventing a reasonable means of escape, positioning a vessel

on their predictable path (minimum 100 yards on either side), separating calves from attending adults, approaching whales at above specified speeds, or running a vessel through a group of whales.

4) *Establish time-area closures.*

There are two voluntary no-boat zones off San Juan Island that commercial whale watching companies avoid. Keeping all boaters out of these areas, while difficult to enforce, is a good idea. One of the reasons that these two areas were established was to facilitate shore based viewing. NMFS and NOAA recognize that there are individuals, as well as groups, that are totally against any whale watching from vessels. Some of these people actually promote only shore based operations. There are approximately 300,000 people that go whale watching in this area in the summer. Most of these people could not afford the cost or have the time to go and sit on one of the beaches on San Juan Island and wait for a pod of killer whales to go by. The economic benefits that these 300,000 tourists bring to all the communities in the N.W. are immense.

Economic studies, such as the 2006 study "Understanding the Potential Economic Impact of Marine Wildlife Viewing and Whale Watching in California: Executive Summary" by Linwood H. Pendleton, should be reviewed to truly evaluate the economic value that marine mammal viewing has to the economy. As quoted in the Pendleton study, "*Numerous studies have demonstrated the economic value of wildlife viewing, especially whale watching. Whale watching contributes to local economies both in direct revenues (and the jobs these revenues support) and in the overall economic wellbeing of coastal users.*" Similar studies should be conducted before we take the drastic steps that some of you have suggested, such as a moratorium on all whale watching.

Prohibiting whale watching for one or more days a week might sound logical, however, to enforce such a program would require a group of enforcement vessels to surround any whales and direct any approaching vessels away from the whales. Would this program apply only to commercial vessels and not private boaters? We have 90 whales in our three Southern Resident Pods. They could be anywhere in this area in the summer and generally they are found in separate groups. If there were day closures of SRKW's our vessels would still conduct wild life tours. Does this mean that if we happen to come across some SRKW we have to flee as someone might observe our boat in the vicinity of whales? Does this mean that if someone reports one of my vessels in the vicinity of whales D.F.O. might want to interview my captain, naturalist or perhaps some of my passengers to see if indeed they saw whales on the trip? Can we look at Transient killer whales on these days? I could continue writing more about the impossibility of trying to enforce this idea, but the point is that what sounds logical is totally unworkable.

Trying to explain to a tour agent from Europe, who is booking a whale watching trip, that we only can operate on certain days of the week would be difficult, and some bookings are made years in advance. Our tours operate from the Lower Mainland near Vancouver, which is an area that is very susceptible to windy days. We are forced to cancel trips on average two to five days a month due to bad weather. Limiting our operation to fewer days would make survival as a business more difficult.

5) *Operator permit or certification program.*

The idea of a certification program or licensing issuance is one that has been discussed in the past by WWOANW, D.F.O., and NMFS; perhaps it is time for such a program - my recommendation would be that the above groups would be the only ones making the decisions on the structure of such a program. The concept of a certified company or operator being able to approach the whales to a distance of 100 yards, and a different approach limit for non-certified companies, has merit and has worked in other parts of the world.

We all recognize that the recovery of the SRKW is a long term cooperative effort that will slowly evolve as more is learned from research and monitoring. The commercial whale watching community is ready and anxious to get on with this project and increase the number of our Southern Resident Killer Whales.

The following position, which we share, is from Shane and Jennifer Aggergaard's letter to you:

In the last 30 years of attempts to study the effects of boating traffic on the SRKW, there has never been a sound, scientific, peer-reviewed study that proves any long-term or short term effects of vessel traffic on the southern resident killer whales. This is an undisputed fact. Any studies that imply effects of vessel traffic have been stretches of the truth.

The world-wide standard for vessel distance from marine mammals is 100 meters. Any larger distance requirements are scientifically unnecessary and would only be useful to appease such leftist groups such as Friends of the San Jeans and Orca Relief. Also, the orcas differ tremendously from other whales such as Humpbacks and Grays in that they are incredibly intelligent, quick, and agile in the water. A vessel strike is extremely rare. Perhaps 100 meters is too much considering the differences between large whales and DOLPHINS.

The local whale watching industry is level or declining as it is. There is no need for day or time restrictions. Any day, time, or distance restrictions would be implemented mostly for public perception, in our opinion. Public perception is in no way related to sound science and equating the two would be erroneous. In our experience, NMFS has always acted on science, not religion, public perception, etc. We trust this will continue to be the case.

After years of observation of these marine mammals, the only two real threats are food supply and toxins in the food chain. The SRKW do not modify their travel patterns due to vessel traffic. We would have surely seen some evidence of vessel avoidance by now if this were the case. We have been tracking these whale's movements in a detailed way for over a decade and have seen no alterations based on vessel traffic. Other animals have modified their travel patterns due to human disturbance, such as deer, elk, cougar, sea lions, etc. These SRKW have not shown any sign of altering travel patterns or geographical use due to boats.

Every fisherman knows that there are a lot more fish west of Race Rocks than east of Race Rocks. The whales choose to be east of Race Rocks most of the time in the spring, summer, and fall months. There are more fish and less vessel traffic out west, yet the whales continue to use the inland waters of Washington State and lower BC.

The educational aspects of our business are amazing tools in heightening the publics' respect and awareness for nature of all kinds. We change peoples' lives every day out there on the water. Seeing whales in the wild really brings people a renewed respect for our earth and is an immensely important part of changing our social mindset regarding the care of our planet.

We, as an individual company, as well as the whole of the industry, make a large economic impact on the Pacific Northwest. People come from all over the world specifically to see these southern resident killer whales. Sales tax revenue data (Island Adventures, Inc.) can be shared with you, upon request, to prove the positive economic impacts of the whale and wildlife viewing industry. Unnecessary vessel restrictions could negatively impact the economic, and all other aspects, of the sightseeing tour business.

Subject: public comment
From: Rachel Soberg <resoberg@shaw.ca>
Date: Wed, 20 Jun 2007 22:20:17 -0700
To: Orca.Plan@noaa.gov

Assistant Regional Administrator
Protected Resources Division
Northwest Regional Office
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115

Re: Federal Register Docket No. 070125020-7020-01; I.D. 010907A
Protective Regulations for Killer Whales in the Northwest Region under the Endangered Species Act and Marine Mammal Protection Act

To whom it may concern:

I write to you now with a nervous, skeptical, cautious tone, but laden with a heartfelt thank you for this opportunity. I view the SRKW's as my extended family and it would be a disservice for me not to respond on some level.

Intelligent, graceful, powerful, empathetic, community, family, friendly, crafty, nurturing, masterful, awe inspiring...these are but just a few descriptive words that come to my mind daily as I narrate & educate 1000's of people every season (all ready a short season). It is a shame that whale watching industry is not formally recognized as 'the friendly ambassadors' to the SRKW's by Government agencies, rather we are viewed as an industry that 'watches the whales to death!' It is this same uneducated, unscientific bias that 'fears' us (humans) into making incredibly rash decisions without careful, meticulous, thought and comprehensive research!

It seems to me that you do not have to be Albert Einstein in order to appreciate that an animal without proper nourishment will not survive. Compliment, this with highly contaminated food and we seem to have a much broader & larger problem than if we are giving the SRKW's a 'headache'! Please I encourage you to regulate very carefully, tread lightly and not upset the delicate balance of a fledging and promising industry with significant economic impact which has done so much for the conservation of these animals.

Increasing the minimum approach zone beyond 100 yards would put all that at risk.

I would like to reiterate and c/c the following: (as per the WWOANW response)...

1. We agree that there is a need for regulation, utilizing existing guidelines and providing the enforcement to level the playing field for ALL vessels, commercial, private, research and governmental including military and para- military, USN and USCG; deep sea traffic and cruise ships. If the rules are not equally applicable to all then they should not exist, which we do not condone.
2. The regulations need to protect the SRKW's where ever they are and whenever they are there, not just in the few summer months that they travel local waters; Find out where they are for the other 7 months of the year and protect them there;
3.
 - a. Management options must include additional enforcement. They should also include our new Self Policing Model (the Industry Executive Review Committee-IERC) which will help fill some enforcement gaps, and fill them now;
 - b. Some operators and many passengers comment that they would prefer to see the minimum approach distance reduced to 50 yards, however, we are not advocating that at this time.
 - c. Use the Be Whale Wise Guidelines AS THEY CURRENTLY EXIST with a minimum approach distance of 100 yards, making regulatory allowances for situations in which the SRKW's approach vessels as well as other situations where approach within the 100 yards is not reasonably avoidable;

- d. Enforce the Be Whale Wise guidelines and establish a baseline of behavior for ALL vessels of ALL types; none should be exempted from the law; charge or fine operators who do not abide; do not encumber the industry due a lack of enforcement effort; make that effort and ensure a level playing field
 - e. Prohibit running a vessel through a group of SRKW's at any speed, reduce speed to 7 knots (or the SRKW's speed if faster) when in the vicinity of whales (within 400 yards), prohibit separation of calves from mother or attending female,
 - f. Prohibit salmon fishing, commercial or recreational, until such time as stocks recover and SRKW's are delisted as endangered species;
 - g. Prohibit aircraft over whales under 2000 feet and within 2 lateral miles.
 - h. Time and area closures can not go beyond those voluntarily abided by, namely 0.5 Nautical Miles off Lime Kiln Lighthouse for 1.0 shore miles northwest and southeast, when SRKW's are present within; and ¼ mile offshore between Eagle Point and Mitchell Point;
 - i. Prohibit swimming with, touching and feeding SRKW's;
 - j. We have not seen signs of the SRKW's allowing themselves to be unwillingly herded or surrounded where they can not escape. They always have the third dimension, depth, which many shore based observers tend to overlook, perhaps because they view from solid ground where no such dimension exists for most animals. In years past when it was standard practice to conduct the Stop and Wait Sequence, whales consistently swam between the boats without incident; We must remember that these animals spend the large majority of their time underwater and not at the surface;
- 4.
- a. Compared with any other type of vessel (pleasure, tug, navy, coast guard, cruise ship, deep sea freighters), the commercial whale watching vessel has less impact on the SRKW's than any other, witness the hundreds of thousands of trips undertaken and the almost perfect record; Combine this with the ecologically friendly engine and drive installations which our industry is pioneering and you have an ever decreasing impact, due to the highly competitive nature of this particular free enterprise system. This highly competitive nature of this industry has pushed it to what some refer to as a tipping point, putting it at risk;
 - b. Permit Certification, if any, should be issued by and managed by the international industry association, WWOANW, which has proven itself to be world leader in matters effecting marine mammal viewing and organization. A joint international commission will be too cumbersome, not reactive nor proactive, as the industry is able to be, under the guidance of NMFS. Any permits should allow the holders to go beyond what non-permit holders are able to do. We are not convinced Permitting is necessary at this time, given the pressures the industry is already under and the reductions we are facing.
- 5.
- a. Regulatory steps taken beyond these suggested herein will significantly and negatively impact the industry, reduce jobs, and negatively impact the regional tourism industry including hotels, ferries, airlines, buses, restaurants. People travel from all over the world to visit the Pacific Northwest and view the icon of this pristine area, the Killer Whale. Additional pressures at this time while we are at a tipping point will result in negative economic impacts to an industry which has taken millions of people to see whales in their wild habitat, and thereby raised the SRKW's awareness to the level it is now at.
 - b. As a result of the reduced travel by the general public, partially due to the after effects of 9/11, our industry has seen reductions in the number of vessel trips and the number of vessels in the vicinity of the SRKW's at any given point in time. This has created an economic tipping point which threatens the industry's well being, before any additional adverse impacts, such as undue regulatory impacts;
 - c. Any regulations should apply only to the ESA listed animals, namely the SRKW's, not other whales or marine mammals

Leave the beuacracy behind and do what is right->protect salmon stocks, educate ALL vessel operators re: respectful viewing practices from kayaks to the military, clean up the environment, educate the public, and openly support an industry that is unbelievably passionate about ALL the wildlife that lives in it's backyard. We are people that have chosen a path as educators & ambassadors because we love what we do and truly undeniably care for these animals.

Passion and education are two very powerful tools that research & government agencies cannot afford to lose or mis-represent!

The WWOANW is such a resource.

**"Inspiring the conservation of our marine environment,
with a thrill!"**

With hope...

Very best regards,

Brett Soberg
owner/operator
Eaglewing Tours Ltd.
Victoria, BC Canada
whales@eaglewingtours.com
bdsoberg@shaw.ca
1-250-384-8008

Subject: Southern Killer Whale Recovery Plan

From: james maya <captjim@interisland.net>

Date: Wed, 20 Jun 2007 21:48:23 -0700

To: Orca.Plan@noaa.gov

We would like to lend my voice in support of the viewing standards, especially the 100 yard standard, now in place for the following reasons:

So far this year, as in years past, J Pod is the only pod being seen. It is the healthiest pod and gets perhaps 80% of the boat traffic.

Present standards are working, seeing as how the Super Pod is growing in numbers.

In about 7000 hours with the SRKW's, the only time I, Jim Maya, have seen Orcas disturbed by a boat was when the U.S. Schoop was using its sonar.

The SRKW survival depends on Salmon Restoration and reduced pollution.

There is no sound accepted science that proves that boat traffic hurts the Orcas.

Attacking whale watch boats with sever restrictions is nothing more that pr move to make it look like something is being done.

In literally millions of hours of accumulated whale watching, no whale watch boat has ever hit an Orca.

Orcas are safer with boats around them.

Sincerely yours,

Captain Jim and Carolee Maya

Maya's Westside Whale Watch Charters
210 Madrona Dr.
Friday Harbor,
San Juan Island, Washington 98250
360-378-7996 Cell 360-622-6305
captjim@interisland.net
www.mayaswhalewatch.biz
Member.... Whale Museum
Whale Watch Operators Ass. Northwest
US Coast Guard License 784477

Subject: Comments on Proposed Rulemaking re: Southern Resident Killer Whales

From: james dale <moorocka@hotmail.com>

Date: Thu, 21 Jun 2007 02:54:01 +0000

To: Orca.Plan@noaa.gov

CC: orcas@5starwhales.com

Date: June 20, 2007

To:

Assistant Regional Administrator
Protected Resources Division
Northwest Regional Office
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115

From: Eric A. Johnson, President, and
Jim Dale, General Manager,
on behalf of Five Star Whale Watching,
706 Douglas Street,
Victoria, B.C.,
CANADA
V8W 3M6

First, Five Star Whale Watching commends National Marine Fisheries Service for the way that they have handled the process of seeking public input and the measured way that you have proceeded.

Second, let us address the main issues at hand:

(1) Advisability of and need for regulations

Five Star Whale Watching believes that regulations are advisable and necessary. Voluntary efforts through the Whale Watch Operators Association North West (WWOANW) and "Be Whalewise" as promoted by the whale watching industry and NMFS have had tremendous impact in educating the public and those involved in many commercial activities. Voluntary measures have seemed to have run their course, greatly advancing the cause of protection and conservation but further progress is necessary and likely only achievable through formal regulations.

(2) Geographic scope of regulations

Five Star Whale Watching believes that regulations need to be applied in a consistent manner in all locations that the Southern Resident Killer Whales travel. As their true range is still not fully understood, we recommend that the Precautionary Principle be followed and that these regulations apply from Southern California to Southeast Alaska and out to International Waters.

(3) Management options for regulating vessel interactions with killer whales

Five Star Whale Watching supports the general concepts of (i) codifying the current NMFS Regional marine mammal viewing guidelines into regulations; (ii) codifying the guidelines into regulations with additional improvements; (iii) establishing minimum approach regulations similar to the ones for humpback whales in Hawaii and Alaska and North Atlantic right whales; and (iv) restricting activities of concern similar to the MMPA regulation prohibiting the public from feeding or attempting to feed wild marine mammals.

What Five Star Whale Watching wishes to emphasize is that a lot of thought and effort has gone into the creation of the Be Whalewise Guidelines and to stray too far from these would be a tremendous disservice to those who have worked on them over the last 10 years. Starting from scratch would be seen as a sign of desperation and a slap in the face to those within the recreational boating community and whale watching industry who have been championing the Be Whalewise Guidelines for their conservation and stewardship values and ethic.

(4) Scientific and commercial information about the effects of vessels on killer whales and their habitat

One of the most frustrating aspects of creating regulations and adapting to them is that there is so little conclusive data on so many basic issues. Most studies and papers conclude that we still have not found direct adverse effects on Southern

Resident Killer Whales from vessel presence. In spite of this most commercial whale watchers have voluntarily agreed to take precautionary measures as outline in both the Whale Watch Operators Association N.W. Best Practices guidelines and Be Whalewise.

Because of the lack of conclusions there are wild accusations and potentially scurrilous remarks made that Commercial Whale Watchers are unable to refute. Collectively we say "Enough already!", and we literally beg NMFS to help fund projects to eliminate much of the uncertainty that surrounds the effects on killer whales and their habitat.

(5) Information on potential economic effects of regulating vessel interactions Five Star Whale Watching accepts that there might be negative economic impact on commercial whale watching from restrictive regulation. We acknowledge that the welfare of the Southern Resident Killer Whales is and should be the primary concern. But we emphasize that the amount of economic impact will be largely determined by how the new regulations are presented, advertised and promoted.

Five Star Whale Watching has long believed that new regulations could, in fact, promote economic value if the new regulations are properly announced and promoted as the next step on the continuum of long-standing cooperation between NMFS, WWOANW and the public who live around Puget Sound and the San Juan Islands.

(6) Any other relevant information that the agency should consider if it undertakes rulemaking.

We must not forget that much of the clamor for regulations to protect the Southern Resident Killer Whales is a result of the hundreds of thousands of passengers who have left commercial whale watching vessels better informed on the challenges that Southern Resident Killer Whales face, more educated on steps that they can take to help the environment for the Southern Resident Killer Whales and energized as activists to demand protections. We cannot afford to lose the momentum that this new activism has created.

Sincerely,

Eric A. Johnson, President and
James "Jim" Dale, General Manager,
Five Star Whale Watching,
706 Douglas Street,
Victoria, B.C., Canada,
V8W 3M6

Windows Live Hotmail with drag and drop, you can easily move and organize your mail in one simple step. Get it today! www.newhotmail.ca?icid=WLHMENCA153

Subject: Re: My comments

From: Tom Avera <chartert@rockisland.com>

Date: Thu, 21 Jun 2007 17:54:47 -0700

To: Vancouver Whale Watch <info@vancouverwhalewatch.com>, fun@sanjuansafaris.com, jeff@emeraldsea.ca, cmcarli@hotmail.com, mystic@ncia.com, eclipse@orcasonline.com, dbryan@victoriaclipper.com, orca@rockisland.com, tours@oceanecoventures.com, naturallysalty@pacificcoast.net, john@orcaspire.com, whales@greatpacificadventures.com, whales@islandadventurecruises.com, captjim@interisland.net, allmail@pugetsoundexpress.com, sanjuanex@watchwhales.com, whales@seafun.com, seabreezeadventures@hotmail.com, whales@eaglewingtours.com, liz@sequestadventures.com, dan@springtidecharters.com, captainhollywood@hotmail.com, erik@anacorteskayaktours.com, drew@whales.com, info@whalesvancouver.com, orcas@5starwhales.com, adam@oceanexplorations.com, alanmcgillivray@shaw.ca, don_krekoski@telus.net

CC: Orca.Plan@noaa.gov

Below are my comments regarding the recovery plan. Some of you might not like what I had to say but based on 19 years of operating here things have not improved in the eyes of the public, nor the powers that be. Yes, we have guidelines that are constantly evolving, and we base our operations on the latest science. In all honesty, it looks terrible out there, fast boats coming and going all times of the day, repositioning at speed, and most of all, operators who just don't get it. This recovery plan will not be based on the specific needs of the SRKW. It will also include a plan to satisfy public perception and we are the biggest target there.

Kari (Soundwatch) is completely justified in her views based on what she is seeing. She has worked with us, supported us and warned us many times in the past. For some reason we just aren't listening. She is recommending 200 yards and would also like to see 1/2 mile offshore from Salmon Bank to Turn Point.

Therefore, I would and will support the 200 yard limit if things don't improve, without hesitation, and I would support a time of day limit of viewing as well.

Tom Avera
Deer Harbor Charters

PS: One inexpensive expenditure I recommend is a range finder. Take a look through it, you'll be surprised.

Hello,

I have owned and operated Deer Harbor Charters on Orcas Island for 19 years. During these 19 years I have seen changes to this ecosystem and to the industry to which I am involved.

I support your efforts to protect the SRKW. I would ask that you pay particular attention to the sharp decline in herring and salmon, a major link in the food chain in which the SRKW depend. It is my belief that the staple prey for the SRKW (salmon, mainly chinook) are the largest component in the survival of the SRKW.

As an owner and operator of one of the oldest whale watch companies in the region, I have noticed a number of whale watch boats with the orca whales during daylight hours. If the presence of boats is an issue, why not create a time when viewing whales is allowed, such as 8AM to 6PM? Years ago when there were fewer whale watch companies, there was never a boat out with the whales after 5PM. I would also recommend a permit system, limited entry for whale watch companies to control the number of

commercial activity.

Creating a speed limit on approach to the whales would be appropriate, such as 7 knots from one mile away. This would reduce any noise pollution the whales might experience from powered craft.

The Be Whale Wise guidelines are, in my opinion, very good and appropriate for commercial and private boaters. However, more enforcement and education of the private boaters is a very important part of the protection of the SRKW.

To sum up, creating a more vigorous restoration program for herring and salmon will rebuild the food chain, which in turn will increase the prey source for the SRKW. This is the most important component to the goal of a healthy population of orca whales for many generations to come.

There are factors we can not control, such as the removal of a number SRKW during the capture period of the 60's and 70's, when most of the females of reproductive age were removed for captivity. This issue, in the long term, could be the real cause of the decline, due to the limited carrying capacity of the population.

Global warming, pollutants, and noise must be addressed as well.

Thank you for the opportunity to voice my opinion.

*Tom Avera
Deer Harbor Charters
Orcas Island, Wash.*

Subject: vessel effects

From: Tom Avera <chartert@rockisland.com>

Date: Wed, 13 Jun 2007 10:10:54 -0700

To: Orca.Plan@noaa.gov

Hello,

I have owned and operated Deer Harbor Charters from Orcas Island for 19 years. During these 19 years I have seen changes to this ecosystem and to the industry to which I am involved in.

I support your efforts to protect the SRKW. I would ask that you pay particular attention to the sharp decline in herring and salmon, a major link in the food chain in which the SRKW depend. It is my belief that the staple prey for the SRKW (salmon, mainly chinook) are the largest component in the survival of the SRKW.

As a owner and operator of one of the oldest whale watch companies I have noticed a number of whale watch boats with the orca whales during daylight hours. If the presence of boats is an issue, why not create a time when viewing whales is allowed, such as 8AM to 6PM? Years ago when there were fewer whale watch companies, there was never a boat out with the whales after 5PM. I would also recommend a permit system, limited entry for whale watch companies to control the number of commercial activity.

Creating a speed limit on approach to the whales would be appropriate, such as 7 knots from one mile away. This would reduce any noise pollution the whales might experience from a high speed outboard powered craft.

The Be Whale Wise guidelines are, in my opinion, very good for commercial and private boaters. However, more enforcement and education of the private boaters is a very important part of the protection of the SRKW.

To sum up, creating a more vigorous restoration program for herring and salmon will rebuild the food chain, which in turn will increase the prey source for the SRKW. This is the most important component to the goal of a healthy population of orca whales for many generations to come.

There are factors we can not control, such as the removal of the SRKW during the capture period of the 60's and 70's, when most of the females of reproductive age were removed for captivity. This issue, in the long term, could be the real cause of the decline, due to the limited carrying capacity of the population.

Global warming, pollutants, and noise must be addressed as well.

Thank you for the opportunity to voice my opinion.

Tom Avera
Deer Harbor Charters
Orcas Island, Wash.

Subject: orca recovery plan comments

From: Tom Avera <chartert@rockisland.com>

Date: Sun, 25 Mar 2007 13:50:01 -0700

To: Orca.Plan@noaa.gov

The question I have is that with the recent sighting of K and L pod down in Monterey Bay, and with the consistency of winter sightings of these pods there (three of the last four years), will this increase the 'protected area' for the southern residents to include the coast from Vancouver Island to central California? If so, will the whale watch companies there be faced with the same guidelines and coming restrictions as well as salmon fishing, shoreline development and habitat restoration as this area? If not, why not?

It seems to me that NMFS is facing a much larger area than they planned for (or have they taken this expanded into account?). I would hope that protection for these whales will include the coast and offshore waters as well as southern Vancouver Island waters.

The whale watch industry around southern Vancouver Island is one of the most regulated (self imposed) whale watch industries in the world. We are always changing our guidelines as the latest science changes. There is not any conclusive proof that our vessels effect orca behavior in a negative way.

I would like to know if the whale watch companies are more prone to restrictions because of public perception and not real science and because we are the most visible on the water with the whales.

I would ask that more attention be paid to the decline in the salmon populations here which is the main food for the southern residents. I would also ask that more science be applied to the orca during the winter months which is when we see the largest decline, especially in L pod.

Tom Avera

Deer Harbor Charters

Orcas Island, Wash.

1-360-376-5989

PS: I recommend to control the growth of the whale watch industry and to manage the industry that a permit system be put in place as in Hawaii.

Subject: comments on proposed rulemaking
From: Erik Schorr <erik@anacorteskayaktours.com>
Date: Wed, 20 Jun 2007 16:15:04 -0700
To: Orca.Plan@noaa.gov

Comments from Erik Schorr, President of Anacortes Kayak Tours,

As a former whale watch boat captain and current operator of kayak tours in the Salish Sea, I am convinced that the appropriate measures to take to protect the SRKW is to protect the food resources.

The current Be Whale Wise guidelines are more than enough protection for the animals in regards to vessel traffic. If there is in fact a need to "protect" this population of highly intelligent and very urbanized predators from the effects of vessel traffic, then more enforcement of the current guidelines is far more appropriate than expanding the current 100 yard buffer that is today's global standard for whale viewing. An expansion to 200 yards could actually have a negative effect for the orcas if the whale watch industry was damaged by it. The companies represented by the WWOANW provide a fantastic platform by which the general public can be educated about these wonderful and iconic creatures. Without the ability to generate an immediate emotional response to any problems the whales may face we are sure to relegate the health of the animals, and the Salish Sea in general, to the back-burner of the public mind.

Over the last decade it has been my belief that much unsubstantiated ado has been made about the effects of boats watching whales. More to the point, whale watching seems to most negatively affect people watching people watch whales. And the folks most affected seem to be the ones living in areas where their "proprietary views" are impacted by the ephemeral presence of whale watching boats. The whales don't seem to be affected much at all.

As Charles Barkley once said; "I could be wrong...but I doubt it".

Thank you for your time,
Erik Schorr
Anacortes Kayak Tours
(800) 992-1801
www.anacorteskayaktours.com

Subject: Public Comment

From: "Dale Martinis (Captain Hollywood)" <captainhollywood@hotmail.com>

Date: Wed, 20 Jun 2007 12:14:03 -0700

To: orca plan <Orca.Plan@noaa.gov>

CC: Dale Martinis <captainhollywood@hotmail.com>

Public comment from Dale Martinis

As a whale watching captain of the SRKW since 1991, I fail to see any extra protection needed from so called vessel effects for the whales over and above the Be Whale Wise Guidelines. The SRKW seem to go about their daily business just fine year after year.

It seems to me the protection they do need is enhanced food source such as the evidence of the appearances of the pods in California in the winter that surely must be a result of the enhanced successes of the Sacramento River salmon food source. "If you cant eat, you die, when you eat well, you multiply"

I have yet to see, after six years now, any government stats on fish stocks available to SRKW during the decline of populations of 1999, 2000 and 2001. It is time to challenge the governments for the reason of decline due to lack of food source. So where was the loss of food source in the decline years? Whale Watching did not cause these population declines which has resulted in this ESA listing

We are wasting time, locally, in not developing the Elwha River food source enhancement immediately and instead we are focusing on vessel effects that have been a part of the SRKW environment for 100 years. They grew up with this environment from freighters to tugs and massive fishing fleets and now private and commercial boats that currently give a quiet wide berth unlike they used to.

There is a tremendous amount of noise coming from vessels and aircraft all over the SRKW neighborhood.

Tankers, Freighters, Tugs and vessels of all sizes in the ocean, Juan de Fuca Strait, Haro Strait, Admiralty Inlet, Rosario Strait and all of Puget Sound. Have you ever heard an EA 6B prowler take off from NAS Whidbey and fly right over the SRKW feeding grounds of West Beach and lower Rosario? One freighter or HARD pulling tug has at least twice as much ear shattering horsepower than the entire whale watching fleet combined. ALL of this vessel noise has been in SRKW ears for decades upon decades right back to the beginning of the century. This is nothing new for the SRKW. What is new is depleting Chinook salmon stocks since 1900

The killer whales have mechanism to hear right thru all the noise and navigate and find all the food they need

I have yet to see malnourish whales leave the area in the fall. They are always happy and well fed from their summer residency. I have watched them navigate point to point when the points are several miles apart

As I viewed J pod near False Bay @ 11:40 hrs on May 30, 2007, I was extremely impressed at how healthy they looked and playful they were for the early season. They looked well fed to me and were vocalizing beautifully.

There has always been noise in Haro strait from vessels and there always will be. When I have my hydrophone in the water I can hear freighters and tugs from miles away. I have never seen any changes of behavior from the SRKW at all. Miraculously it was J pod that was subject to the massive sonar pinging from the USS Shoup and has apparently survived just fine. Are they able to tune it out?

As I viewed J pod on June 11, 2007 @ 15:30 hrs at Stanley Point in BC, with my hydrophone in the water

a BC Ferry filled my boat with loud noise as it cruised by for 15 minutes. I saw no changes in the SRKW behavior as they slowly made their way north.

The whale watching fleet helps protect the SRKW from the uninformed public boater and there is always a constant awareness and communication with the authorities to protect this endangered and valuable resource. Any further limits will sacrifice this industry guided level of protection from renegade boaters.

In the nineties it was common practice to position vessels in the path of on coming whales and or hold course and speed when encountering the SRKW. The whales seemed to enjoy this interaction and seemed to show off and would roll over and expose their undersides and do cartwheels and breaches and dive right under the boats. (what animal on earth feeling threatened, would expose their most vulnerable side right next to the quote unquote threat?) It was thought that salmon would hide in the shadows way under the boats and that this would afford foraging opportunities for the whales. They seem to enjoy this and there was recent research revealed in the media claiming that dolphins experience pleasure. I believe it to be true that the whales loved the challenges and obstacle courses that were there for them in those days. My only hope is that we have not hurt their feelings in recent years by not giving them some of the fun they used to have.

I have asked many researchers whom I know to be in the field regularly "how boats affect the whales?" Replies have been "they could care less" "They are used to boats" "boats have always been apart of their lives" "Boats are only on the surface"

I believe that the whales are not bothered by boats at all.

I still have a difficult time explaining to my clients the need for Distance and Quiet, as I conform to the Be Whale Watch Guidelines, and then the presence of research vessels right on top of the whales during my entire half hour viewing time. This is a government sanctioned double standard that must stop. I have yet to see any conclusive result from this form of legal harassment while I am kept at bay and subject to prosecution. How much close-in research is needed to find out nothing? Lets do the research at a distance like the rest of us.

The vessel regulations that should be adopted are in fact the "Be Whale Wise Guidelines" as written on today's date. Any increase beyond 100 yards will kill my ecotour business from my small vessel.

Lets start putting the energy into long term food source enhancement. Lets stop focusing on the problems that are not really problems and only a result of human emotions.

Boat noise has been a fact of life for the SRKW long before we arrived, pure and simple fact.

Thank you

"Captain Hollywood" Dale Martinis
www.PrivateWhaleWatching.com

Subject: Comments on proposed recovery plan - ORCA
From: aggergaard <aggergaard@comcast.net>
Date: Wed, 20 Jun 2007 11:44:36 -0700
To: Orca.Plan@noaa.gov

Assistant Regional Administrator
Protected Resources Division
Northwest Regional Office
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115

June 19, 2007

Dear Sir/Madam:

Thank you for the opportunity to comment on the proposed recovery plan for the SRKW and how it relates to vessel traffic regulations. We, Shane and Jennifer Aggergaard of Island Adventures, Inc. and on behalf of all of the commercial whale watching companies here in the northwest, respectfully submit the following comments.

1. In the last 30 years of attempts to study the effects of boating traffic on the SRKW, there has never been a sound, scientific, peer-reviewed study that proves any long-term or short term effects of vessel traffic on the southern resident killer whales. This is an undisputed fact. Any studies that imply effects of vessel traffic have been stretches to the truth.
2. The world-wide standard for vessel distance from marine mammals is 100 meters. Any larger distance requirements are scientifically unnecessary and would only be useful to appease such leftist groups such as Friends of the San Juans and Orca Relief. Also, the orcas differ tremendously from other whales such as Humpbacks and Grays in that they are incredibly intelligent, quick, and agile in the water. A vessel strike is extremely rare. Perhaps 100 meters is too much considering the differences between large whales and DOLPHINS.
3. The local whale watching industry is level or declining as it is. There is no need for day or time restrictions. Any day, time, or distance restrictions would be implemented mostly for public perception, in our opinion. Public perception is in no way related to sound science and equating the two would be erroneous. In our experience, NMFS has always acted on science, not religion, public perception, etc. We trust this will continue to be the case.
4. After years of observation of these marine mammals, the only two real threats are food supply and toxins in the food chain. The SRKW do not modify their travel patterns due to vessel traffic. We would have surely seen some evidence of vessel avoidance by now if this were the case. We have been tracking these whale's movements in a detailed way for over a decade and have seen no alterations based on vessel traffic. Other animals have modified their travel patterns due to human disturbance, such as deer, elk, cougar, sea lions, etc. These SRKW have not shown any sign of altering travel patterns or geographical use due to boats. Every fisherman knows that there are a lot more fish west of Race Rocks than east of Race Rocks. The whales choose to be east of Race Rocks most of the time in the spring, summer, and fall months. There are more fish and less vessel traffic out west, yet the whales continue to use the inland waters of Washington State and lower BC.
5. The educational aspects of our business are amazing tools in heightening the publics' respect and awareness for nature of all kinds. We change peoples' lives every day out there on the water. Seeing whales in the wild really brings people a renewed respect for our earth and is an immensely important part of changing our social mindset regarding the care of our planet.
6. We, as an individual company, as well as the whole of the industry, make a large economic impact on the Pacific Northwest. People come from all over the world specifically to see these southern resident killer whales. Sales tax revenue data (Island Adventures, Inc.) can be shared with you, upon request, to prove the positive economic impacts of the whale and wildlife viewing industry. Unnecessary vessel restrictions could negatively impact the economic, and all other aspects, of the sightseeing tour business.

Respectfully,

SHANE AND JENNIFER AGGERGAARD, OWNERS



**1801 COMMERCIAL AVENUE
ANACORTES, WA 98221**

**(360) 293-2428 - O
(800) 465-4604 - O
(360) 661-5832 – JEN**

WWW.ISLAND-ADVENTURES.COM

Subject: Re: Federal Register Docket No. 070125020-7020-01; I.D. 010907A
From: "Adam Hellicar - adam@oceanexplorations.com" <hellicar@gmail.com>
Date: Wed, 20 Jun 2007 19:18:40 -0700
To: Orca.Plan@noaa.gov

Assistant Regional Administrator
Protected Resources Division
Northwest Regional Office
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115

Re: Federal Register Docket No. 070125020-7020-01; I.D. 010907A
Protective Regulations for Killer Whales in the Northwest Region under
the Endangered Species Act and Marine Mammal Protection Act

Dear Sirs:

Thank you for the opportunity for input on the Proposed Rulemaking.

I would just like to mention what we call a "silent setup" This is a maneuver that is especially practiced by the smaller Zodiac style whale watchers. Because the small boats are very maneuverable we can take advantage of turning our engines off. One of the big issues with viewing whales is the sound underwater. An ideal whale watch experience for us is to set up 1 to 2 kilometers in front and to the side of where the whales are heading. We then turn our engines off and wait. ten to twenty minutes may go by as we wait for the whales to approach, all this time we are silent in the water. If we notice that we may be close to the path of the whales a discreet start up and back out of the path is done. As the whales approach we may have 5- 10 minutes as the whales go by and another 5 minutes as they head off. In total we have had a 20 - 35 minute whale experience and done this in a way that is whale friendly. 30 minutes should be our limit out there - now we go home. Please don't overlook the smaller zodiacs and how we fit into the game. Remember it's about the noise and a "silent Setup is really a nice way to view whales.

Thanks

Adam Hellicar
Ocean Explorations
250 415 2063